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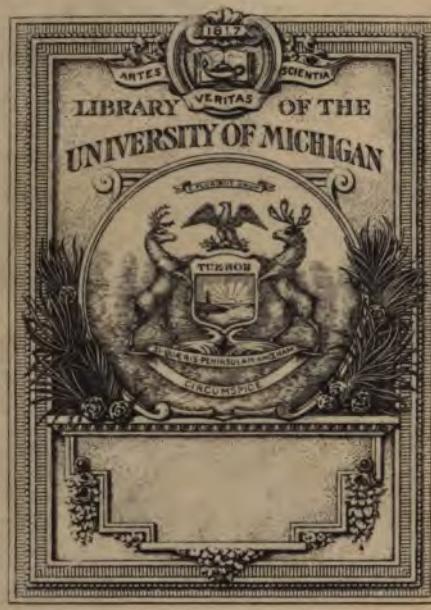
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THOUGHTS
OR
MARTIAL LAW,
WITH A
MODE RECOMMENDED FOR CONDUCTING
THE
PROCEEDINGS
OF
GENERAL COURTS MARTIAL.

INSCRIBED TO THE
GENTLEMEN OF THE ARMY,
BY

RICHARD JOSEPH SULIVAN, Esq.

SANCTIO JUSTA, JUBENS HONESTA, ET PROHIBENS CONTRARIA.
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P R E F A C E

AMONGST the Gentlemen of the Army, for whom alone this Treatise hath been compiled, many unquestionably will be found, who from experience and ability, are beyond the reach of any information which the Author can give them, either in their executive or deliberative capacities. To them, therefore, little need be said: Their candour will, unsolicited, teach them to look with indulgence on a performance calculated for the meridian of a Military sphere; and their good sense, to protect it, should it be deemed not unworthy of their patronage. The young

and inexperienced, however, are those for whom these hints are principally designed. They, from the novelty of the scene, recently perhaps appointed either in the Regulars or Militia, cannot intuitively possess a knowledge of the duties of their profession. To aid the disposition of doing well, the rule must be prescribed; for justice may be intended, though injury may result, from an ignorance of the principles on which a man professionally should act.

Were it in the inclination of the Author, the few following pages might readily be swelled into a volume of a respectable appearance. The materials are abundantly numerous for it, and the attempt would most probably be received with a degree of approbation by the public in general. But men in the field

are

are not to be amused with argumentative discussions :—Quick in their decisions, they stand in need of general principles, more than of a variety of cases. In this idea, these thoughts were with difficulty drawn into their present compass.

The assistance received from Mr. S. P. Adye's Treatise on Martial Law, hath not been inconsiderable. The references made by that Gentleman to some of the authorities who have treated on the subject, and which clearly led the way to an useful source of information, exempted the Author from many a laborious and unpleasant investigation of statutes, pleas of the Crown, &c. Had Mr. Adye, indeed, been more particular with respect to the *proceedings* of General Courts Martial, the present work would never have
been

been obtruded on the world. But as he is silent on points which may every day occur, and which have frequently perplexed the decisions of a court,—and as the officers of the army have invariably expressed a desire to be informed decisively of the grounds on which they stand, an attempt to ascertain them, may not be unwelcome or ill-timed. In short, if in a matter of such high importance, in which are most deeply concerned the interests both of justice and humanity, one unpresuming effort shall be found to tend towards the safety and well-being of even the lowest veteran of the camp,—every purpose of the Author will be fulfilled.

THOUGHTS

THOUGHTS

ON

MARTIAL LAW, &c.

IN a country, famed throughout the world for the wisdom of its laws, the excellency of its civil and criminal jurisprudence, and the jealous attention of its members to the smallest innovation of the liberty of the subject, it is a matter of singular consideration, that so little hath been written on the Martial Law of England. That this may have proceeded from its dryness and sterility will be readily allowed. A science, without professors, must inevitably fall into disreputation; besides

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which, the discipline of a camp, in every essential, most widely different from that of a common court of law, may have made it unworthy of the attention of those whose abilities would have enabled them to have expatiated on the subject. In the one, indeed, where established formality presides, the crime* which the law punishes, as well as the penalty which it inflicts, is ascertained and notorious, nothing being left to arbitrary discretion. The king, by his judges, dispenses, what the law has previously ordained, but is not himself the legislator. Whereas in the other, the judge both ascertains the guilt and inflicts the punishment at his discretion.

Martial Law, in general hath been defined, a temporary excrescence, bred out of the distemper of the state, and not as any part of the permanent and perpetual laws of the kingdom. Sir Matthew Hale,

* Blackstone, Vol. I. page 415.

and

and Sir William Blackstone, say, it is built upon no settled principles; but is entirely arbitrary in its decisions, and is, in truth and reality, no law, but something indulged rather than allowed as law. However this may be—the Law Martial of England is indisputably authorized by an act of the legislature. The king is empowered to form, make, and establish articles of war, both for his own troops, and for those of the East India Company. He is likewise empowered to grant a commission or warrant under his royal sign manual to the directors of the East India Company, who, by virtue of such warrant or commission, can delegate their authority to their presidencies abroad ; and this act, it is ordained, shall continue in full force for one year, and then be subject to revision and further prolongation.

When we consider therefore, in times of war, when this act is calculated with

efficiency to operate; that no less perhaps than a million of subjects, either in arms for their sovereign, or as retainers to his camps, are amenable to its coercion ; and that the power of the crown, an unlimited power to create * crimes, and annex punishments to them, not extending to life or limb (for the life and limbs of a man are of such high value in the estimation of the law of England, that it pardons even homicide, if committed *se defendendo*, in order to preserve them) is not unalienably confined to the sovereign himself, but is diffused, by delegation, to his different officers on service ; it will not be deemed a reflection, hazarded without some foundation, to say, that those whose more immediate province it has been, to digest a code, and throughout the forces, to establish an uniformity of law procedure, have been negligent in the service of their country.

* Blackstone.

The

The study of the law hath been deemed more than a sufficiency of employment for the life of any one man. If, therefore, the intricacies of that wily labyrinth can occupy the time of a person, entirely devoted to its service, where shall we suppose those in a military line are to be found, who, in the bustle of the field, are to dedicate their time to a tedious, and to them, an unprofitable labour? Processes and retainers out of the case, even chancery itself would lose its reputation. No man works in these days, but, in the prospect, or in the certainty of reward. The soldier, therefore, who spends his days in toil, and his nights in hardship and fatigue, cannot be supposed to have the means, or the disposition of qualifying himself for a court of law; or for that most serious and important of all his duties, the passing of judgment on his fellow creatures.

Impressed in a high degree with the purest and most tenacious principles of honour, and regulating their conduct by dictates of equity, more than those of stubborn ordination, officers may be supposed to be the most unexceptionable judges; but, in truth, the more benevolent and praise worthy they are, in the effusions of the finer dispositions of the soul, the more liable they are to err. Rigour in such minds is seldom found exerted. They acquit when in their power, without an adherence to the niceties of prescribed distinction; and clemency in consequence, frequently not only misses the beneficence of its intentions, but oftentimes proves the groundwork of subsequent severity.

To obviate these inconveniences, a Judge Advocate is appointed, whose province it is to know the law*. But, on

* Articles of War, sect. 15. art. 6.

actual

MARTIAL LAW.

actual service, how seldom are lawyers to be met with? A Subaltern, therefore, is usually employed in that department. If, then, officers of long experience and ability, cannot be supposed to have had opportunities sufficient to have cultivated their talents in a field so destitute of laurel, how much less so can it be expected in those whose years and understandings may not have arrived at their period of maturity? For can we say now it is, as it was among the Romans, when the very children were obliged to learn the twelve tables by heart, as a *carmen necessarium*, or indispensable lesson? That law, with all its dire concomitants, would be pernicious in a camp, we most readily will subscribe to. Brevity is essentially necessary on service. But at the same time that we concur in the banishment of all the subtleties of the law, we must as readily confess, that a general knowledge of its principles should be encouraged, lest

those should prove unequal to the task, who may be placed upon the judgment seat of mercy.

Under a conviction of the propriety of this opinion, and of that sound and long sanctified juridical axiom, that law without equity, though hard and disagreeable, is much more desirable for the public good, than equity without law—the following thoughts have been thrown together. Unskilled in the deeper researches of the science of the law, all abstruse reasoning hath been avoided. The authorities, however, from whence each article hath been selected, have been carefully marked down. The very words of some are given, nor are there any points omitted, as far as we can judge, and as far as the extent of this little essay is meant to reach, which can in any wise tend to elucidate the subject. The decision of the candid will

will determine how far these purposes have been answered,

The King, as we have already said, being empowered by act of parliament, (that express investiture, which by the consent of the whole community, placed in his hand the sword of justice) to establish certain regulations for the better disciplining of the army, hath, in the articles of war before-mentioned, enumerated all such crimes as are punishable with *death*, and in general all such as are cognizable by a Court Martial, when acting within the reach of the civil power. Many commentators on the laws, however, have given it as their opinion, that, besides those enumerated in the articles of war, *Aliens* †, who in a hostile manner invade the kingdom, and who in company with rebels of the country or otherwise, are seized and

† Hale's, P. 4. C. 10. 15. 3. Coke's Inst. 2.
deemed

deemed worthy of punishment, cannot be dealt with as traitors, but must be turned over to the authority of the Martial Law. But here let it not be forgotten, that in time of war, or rebellion, a man may be justified in doing many treasonable acts by compulsion of the enemy or rebels, which would admit of no excuse in times of peace. ¹ Hale; P. C. 50. For as punishments are only inflicted for the abuse of that free will which God has given to man, it is highly just and equitable that a man should be excused for those acts which are done through unavoidable force and necessity. This then understood, the articles of war in general are explicit with respect to such misdemeanors as can be tried under the sanction of the military act. Yet as unusual, and unprovided for circumstances may occur, it is always to be remembered, that the concurrence of the *will*, when it has its choice either to do, or to

to avoid the fact in question, is the only thing that renders human actions praiseworthy or culpable. Indeed to make a complete crime cognizable by human laws, there must be both a *will* and an *act*. Sir Matthew Hale's words on the subject should be rivetted in every soldier's breast. It is the greatest offence, says that able lawyer, for a soldier to kill, or so much as assault his General. Suppose then the inferior officer sets his watch or centinels, and the General, to try the vigilance or courage of his centinels, comes upon them in the night, in the posture of an enemy, as some commanders have too rashly done, if the sentinel *strikes* or *shoots* him, taking him to be an enemy, his *ignorance* of the person *excuses* his *offence*.

The power thus existing in the Sovereign, and, by appointment, in his delegates, to direct Courts Martial to be held, and a general Court Martial being required,

required, the person thus exercising the power, issues a warrant to some officer, as the president, and to other officers, as the members of the court, which he finds it necessary to appoint. And the more effectually to prevent the evil consequences which might result from the absence of any of the members who shall thus have been appointed, it is provided for and ordained that, no officer, or soldier, while in orders as a member of a Court Martial, shall * be ordered on any other duty; nor is the court permitted, to sit longer at a time than from eight o'clock in the morning till three in the afternoon, excepting in such cases as require an immediate and rigorous example.

The General Court Martial being thus in orders to assemble, and the witnesses

* Articles of War.

for and against the impending prosecutions, being summoned to attend, the court forms itself at the appointed place, agreeably to its commission, and in the manner following: The members being duly seated—the President at the head, and the other members, according to their several ranks and standings in the army, the Judge Advocate calls over their names one by one, beginning with the President; and then having received from the President his warrant, he reads aloud the President's appointment, and afterwards the commission by which he officiates as Judge Advocate himself. This being done, and the prisoner to be tried being brought before the court (he having been previously furnished with a copy of his accusation, and informed by the Judge Advocate of the time and place allotted for his trial) the Judge Advocate, who acts in the double capacity of Recorder to the court and counsel for the king, demands, *If he has exceptions to any*

any of the members present. If he has not, the Judge Advocate swears in the court, and proceeds to the trial; but if he has, the exceptions which he pleads are to be deliberated upon by the court, and admitted (if they are found of consequence sufficient) by the substitution of new members in the room of those so excepted against. No member, however, can be excepted against after the formation of the court, neither can an ignorance of his former character be pleaded against him, unless he shall have perpetrated some deed, or have been principally or accessarily concerned in the commission of some act, subsequent to such formation, which shall be adduced as guilt against him.

Exceptions, however, being pleaded, it becomes a point of serious investigation to the court, to determine on those which ought to be admitted; and on those

those which ought to be rejected.— Many, but all of them of some consequence, are the exceptions, which a culprit may advance against a juror in a common court of law ; and equitably proceeding, it is not more than justice to a prisoner to admit them in the same extent at a military tribunal ; (which in all cases where the act is silent, should be supposed to be regulated in a similar manner with other courts of judicature) and the more especially, when it is considered that members of a Court Martial sit not only as *jurors*, but, ultimately, as *judges*. In opposition to this indeed, it has been said, that Lord George Sackville *excepted* against General Belford, but, that his reasons not being sufficient, they were over-ruled by the court. The truth, however, is, that Lord George Sackville did not except against General Belford ; he did not offer what he advanced as a legal objection to that officer as a member of the Court Martial ; he
rather

rather submitted his reasons to the court, and to General Belford himself, for their consideration*. Exceptions, therefore, being allowed, the most material are those which hereafter shall be enumerated. Before we come to that point, however, it may not be unnecessary to remark, that, in a court of law, and in a criminal case, when the Sovereign of the state is necessarily a party, it hath been supposed, though erroneously, that the counsel who prosecuteth in his behalf, hath, in like manner with the prisoner, a right to challenge, and *peremptorily* to declare his exceptions against a juror. On this head, the law is clear. The privilege of peremptory challenges, though granted to the prisoner, is denied to the King by the statute, 33 Edw. I. st. 4. which enacts, "that the King shall challenge no jurors, without assigning a cause certain,

* Sackville's Trial, p. 6.

to be tried and approved by the court." However it is held, that the King need not assign his cause of challenge, 'till all the panel is gone through, and unless there cannot be a full jury without the persons so challenged, and then, and not sooner, the King's counsel must show the cause, otherwise the juror shall be sworn.

In high and petit treason, a prisoner has a right to challenge thirty-five peremptorily, that is without assigning any cause; in murder, and other felonies, twenty; and in both as many as he can show sufficient cause of objection to. But, in inferior offences, cause must be assigned for every challenge. Peremptory exceptions are only allowed when life is in danger, and are then permitted by law, in merciful indulgence to the prisoner, who, to adduce a perfect satisfaction in his mind of the impartiality of the jury, is not suffered to be tried

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even by one whose countenance he shall dislike. As it is in tender commiseration, therefore, of the prisoner's situation, that these kind of challenges are allowed, it is almost unnecessary to remark, that it would counteract the benevolent intention of the law, were they permitted on the part of the prosecution; it would operate powerfully against the life of the prisoner, and undermine that principle of mercy which pervades the whole system of the Criminal Law of England.

But here, unhappily, we are to observe, that one of the disadvantages attending a military life, is the privation of this most satisfactory indulgence. Prisoners who are to be tried for their lives by Courts Martial, cannot be granted this great privilege of challenging without cause. And the reason is irrefragable; for were it permitted on board ship, or in distant garrisons, it would be impossible.

ble to bring criminals to punishment, for want of a sufficient number of members to compose a court. And hence it follows, that let what will be the offence, no challenge can be allowed, without a reasonable cause being assigned. Officers, indeed, are not to be told, that relinquishing their seats as members of a Court Martial, when excepted against unsatisfactorily, and when such relinquishment (without inconvenience to the routine of service) is practicable, is not only humane and delicate, but prudent and commendable also. For to sit in judgment, only because objections have been over-ruled, cannot be thoroughly consonant either to honour or humanity : the mind naturally feels, and is stung with the indignity of a challenge, and no character is, or should be, so watchful of its reputation as that of a soldier.

The course of Military Law winding itself in many forms, in the same channel with that of civil and criminal jurisdiction, *a Court of Enquiry*, is conformably to the usage of war, frequently appointed, in like manner with a grand jury, to search into complaints, (with a latitude, indeed, not granted to a grand jury, that of examining all witnesses, as well as those on the part of the Crown; but which it were well if it were interdicted) and finally to determine, whether the persons complained of are punishable by law. Members of a Court of Enquiry, therefore, are liable to be excepted against as members of a Court Martial, that is, if they shall sit as members on the same cause, (their prior presentation being to be considered of the nature of an indictment) or if upon the trial of another action, wherein the same matter is in

+ Adye.

† 8 Henry 4. 2 pl. 4. Coke upon Littleton, 157. 6.
question,

question, it shall happen to be material, though not directly in issue. It is likewise adjudged good cause of challenge on the part of the prisoner, that the juror hath a claim to the forfeiture*, which shall be caused by the party's conviction, or that he hath declared his opinion before-hand † of the party's being guilty, or that he will be hanged, or the like. But a prisoner shall not examine a juror concerning such matter upon hearsay ‡, because it sounds in reproach; and it hath been adjudged, if it shall appear that the juror made such declaration from his knowledge § of the cause, and not out of any ill-will to the party, (though, surely, the declaration appears strongly presumptive of prepossession, and the best founded exception, one

* State Trials, Vol. 1. f. 502.

† 21 Hen. 7. 20 pl. 10. State Trials, Vol. 4.
f. 184, 185.

‡ 49 Edward 3. 1 pl. 2.

§ Rolles' Abridgement, 67, Letter 1.

would suppose, that can be adduced) it is no cause of challenge: and it furthermore hath been adjudged no good cause of challenge, that the juror hath found others guilty on the same indictment; for the indictment, in judgment of law, is several against each defendant, and every one must be convicted by particular evidence against himself*.

And yet this seems to be a subtle and unmerciful decision; for where several are involved in the same crime, and one is found guilty, what chance have the others for their lives, if they shall be tried by the same men? In civil suits, where a juror has formerly given a verdict in the same cause, whether between the same parties or others, it is a good cause of challenge (Coke Lit. 157. Cro. Eliz. 33. pl. 13.) *a fortiori*; it would appear a good challenge when a

* Hawkins, P. C. 418.

man is on the trial of his life, which is so infinitely dearer to him than his property. Judges in a court of honour, therefore, will determine on this harsh, if not inequitable solecism, in common ordination,

The law also allows infamy to be a good cause of challenge, particularly if the juror hath been convicted of treason, felony, perjury *, &c.—But these exceptions can seldom happen in a Court Martial; and besides, none of them are principal challenges (though perhaps allowed, on strong presumptive proof) unless the record of their conviction be produced and shown.

A principal challenge is such, when the cause assigned carries with it *prima facie* †, evident marks of suspicion, either of malice or favour : as that a ju-

* Coke upon Littleton, 158.

† Blackstone, Vol. 3. Page 363.

ror is of kin to either party within the ninth degree; that he has been arbitrator on either side; that he has an interest in the cause; that there is an action depending between him and the party; that he has taken money for his verdict; that he has formerly been a juror in the same cause; that he is the party's master, servant, counsellor, steward, or attorney; or of the same society or corporation with him. All these are principal causes of challenge, which, if true, cannot be over-ruled, for jurors must be*, *Omni exceptione majores.*

The above being, in general, the exceptions which ought to be admitted at a General Court Martial, either on the part of the prisoner, or of the sovereign, we shall now proceed to the formation, or what is in common styled the swearing in of the court. The preamble, as inserted in the Articles of War, being

* Blackstone.

first

first read to the President by the Judge Advocate, the Judge Advocate administers to him the oath ; and then continuing with the members, agreeably to their ranks, and as many at a time as can conveniently be sworn, he afresh reads to them the preamble, and tenders them respectively the oath ; and after that, the oath which it is ordered he shall take, is administered to him by the President, and so the tribunal is formed.

Unacquainted with the serious consequence of a strict attention to the *minutiae* of form in criminal proceedings, General Courts Martial have looked upon the first swearing in of the court, as a sufficient authority to warrant their proceeding on the trial of a variety of offences ; whereas, in propriety, the court should be sworn afresh at the commencement of every new prosecution : for though, as judges, (in the manner of a court of common law,) once swearing would be sufficient ;

sufficient; yet, as jurors, who are sworn on every different trial, though identically the same men, so are the members of General Courts Martial to be considered when a new criminal is brought before them. Lest, however, an established, and therefore an undisputed practice, should have acquired a force still difficult to be eradicated, we shall endeavour to point out those reasons which induce us to maintain this opinion. In the oath which is taken by each of the several members of a General Court Martial, the words, *matter**, and *prisoner*, are cautiously inserted. These words, therefore, being absolutely confined to a single matter, and a single prisoner, and *matters* and *prisoners* not being subjected to their jurisdiction, how is it possible that men, with propriety, can proceed upon a trial which they are not warranted by law to decide upon? Were the obligation in the Articles of War de-

* Articles of War.

cisive as to the trial of all matters, and all persons, and in all cases ; or were the court possessed of the authority of extending the meaning of the oath, once swearing would undoubtedly be sufficient ; but, as in every respect, the contrary is evident,—as the very words of the oath itself express (words which cannot be altered but by the legislature) that “ they shall well and truly try and “ determine according to their evidence, “ in the matter before them, between “ their Sovereign Lord the King's Ma- “ jesty, and the prisoner to be tried.”* How can it be otherwise than an unwarrantable irregularity in them, to proceed upon the trial of offenders, who, in the eye of the law, are not amenable to their authority ? From whom, even they divert the pure stream of justice and humanity. For if the *first* prisoner to be tried, has a right to challenge an officer,

* Articles of War,

who

who may be appointed to sit on an investigation of his offence, as a member of a Court of Enquiry, or who may be liable to any of the exceptions before enumerated,—why shall not the *second* and *third* prisoner be entitled to the same merciful indulgence?

Led away by the practice of others, men of the best intentions, are often found obstinate in principles, which, without reflection, they have adopted. And in this view may be considered the many instances which have occurred of unwillingness of General Courts Martial to be sworn afresh on a new trial. Were the ceremony long, tedious, or troublesome; or were it to involve any thing extraordinary in its consequences, the opposition which it hath met with might, in some degree, be accounted for; but when it is universally known to be a matter of but momentary interruption, and, at the most, to be only an adherence

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to form, how strange does it appear, that men, instead of the pleasant paths of certainty, should prefer those of perplexity and doubt? In every event, however, and by whatever means the custom may have been established, one thing is certain, that conforming to a rule never can be wrong; and that, therefore, following implicitly the Articles of War, is only complying with the ordinations of that power, which alone hath competency to abrogate or alter laws.—Sir William Blackstone, on the best law authorities, speaks decidedly on this question. “ Not only the substantial part, or judicial decision of the law,” says that elegant commentator, “ but also the formal part, or method of proceeding, cannot be altered but by Parliament: for if once those outworks were demolished, there would be an inlet to all manner of innovation in the body of the law itself.”

The

The Court Martial being regularly formed in the manner we have before-mentioned, and the witnesses in attendance, the Judge Advocate begins upon the prosecution. Prepared with the charge, which must particularize as well time and place, as circumstance, and the prisoner standing before the Court, the Judge Advocate asks him, upon reading to him his crime, *How say you,—are you guilty of the crime laid to your charge, or not?* (the law, even during the time when all other proceedings were in Latin, ordaining that the indictment should be read to a prisoner distinctly in the English tongue, that he might fully understand his charge) For if he should plead guilty, or refuse to plead, as in many instances is the case, the prosecution immediately closes, and judgment is passed accordingly (standing *mute ex visitatione Dei*, alone excepted: that act of God rendering him, from an inability to plead himself, most peculiarly entitled to a solemn

lemn and regular investigation of his conduct);—but, on the contrary, if he should throw himself upon the decision of his peers, and consequently stand his trial, by pleading *not guilty*, the witnesses on the part of the Crown, are, *viva voce*, to be examined, and their depositions recorded by the Judge Advocate. And here it should be remarked, that the plea of *not guilty*, should at all times be encouraged in trials at a General Court Martial; for however conscious a prisoner may be himself of the unjustifiability of his conduct, there may circumstances appear to mitigate the atrociousness of a crime, and, in some degree, serve to entitle him to mercy.

The oath to be administered to witnesses runs thus:—*You shall true and perfect answer make to all such questions as shall be put to you, touching the matter now before the court, between our Sovereign Lord the King's Majesty, and the prisoner*

to be tried, which shall be the truth, the whole truth, and nothing but the truth, so help you God.—Nor is this oath to be tendered but in the presence of the whole court, and of the prisoner himself, although *deputations*, as they are called, have frequently been sent to examine a witness, who, from illness, hath been unable to attend. It is true, his Majesty annulled the proceedings of one Court Martial, for having appointed six of their members to take the evidence of a valetudinary witness. But still the practice is continued; the deputation is evermore employed, although in fact, its irregularity is at any time sufficient to render the proceedings nugatory, no part being equal to the whole, unless the delegation of its power be warranted by law. To avoid the consequences attendant upon a measure of this kind, therefore, the whole court should adjourn themselves to the house or quarters of the sick person, and there

there, and in the presence of the prisoner, examine and take his deposition.

The pleas of the Crown on this head, are explicit, and show, for instance,— that where a commission issues to A and B, and twelve others, or any two of them, of which A or B shall be one, to take or try indictments, and any of the other twelve proceed without the interposition or presence of either A or B, all proceedings, in such case, trials, convictions, and judgments, shall be void, for want of a proper authority in the commissioners, and may be falsified upon bare inspection, without the trouble of a writ of error: it being a high misdemeanor in the judges so proceeding, and little (if any thing) short of murder in them all, in case the person so attainted be executed, and suffer death.

The prisoner, however, being put upon his trial, the Judge Advocate, as

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prosecutor for the Crown, begins with his proof of the delinquency of the prisoner's conduct. For the issue is said to lie, and proof is always first required upon that side which affirms the matter in question. To this end, he examines, and cross-examines the several witnesses,—calls upon every one who can adduce testimony in favour of the prosecution, and aims in every respect to establish the certainty of guilt. The court likewise, as judges, take part in the prosecution,—they also examine and interrogate, (either collectively or individually, as they think proper) and in concert with the Judge Advocate, endeavour to arrive at a knowledge of the fact. The Judge Advocate, however, should have concluded with the examination of a witness, before the interrogatories of the court are in general propounded. For although such interrogatories may be pertinent and applicable, yet as the several members have, in the end, an opportunity

portunity of drawing forth answers to such questions as they may put, and as an interruption of the Judge Advocate may probably break in upon a chain of leading and necessary information, it were at all times to be wished, (except in particular and complicated cases) that he were suffered to finish with his examination before the introduction of any new matter be admitted by the court. The examination in behalf of the Crown being at an end—the prisoner cross-questions the witness, if he pleases, or defers it till he is put upon his defence: a privilege, indeed, which is allowed him through every stage of the prosecution. But neither he, nor the Judge Advocate, has a right to cross-examine his own witnesses, lest it should lead to answers concerted previous to the trial, for the establishing of innocence on the one hand, or of guilt on the other. The Judge Advocate is permitted to cross-examine the prisoner's witnesses, and the prisoner

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those for the Crown ; but neither of them the witnesses produced by themselves.

In the examination of witnesses a custom hath prevailed, which, in all its consequences, seems to affect both the principles of equity and justice. This hath been the indiscriminate admission of persons into court subpoenaed on trials. Officers and men have, by this means, found their way into General Courts Martial, when a witness on the same side hath been labouring under the pressure of a variety of questions : the difficulties which he encountered, have thereby been dexterously avoided. The degenerate amongst them, in the replies which he hath made, have learnt the way of undeviatingly keeping in the same story ; the purposes of cross-examination have consequently been frustrated, and a criminal, perhaps, hath been adjudged to suffer, when contradiction in the evidence,

dence might possibly have saved him. No evidence, however, can be given against a prisoner but in his presence, neither can hearsay evidence be admitted.

The examination of the crown witnesses being brought to a conclusion, the prisoner is put upon his defence. If a soldier, he generally commences it without adjournment;—if an officer, a time is usually begged for preparation, and his prayer is granted, if the period is not deemed to be unreasonable. Thus arrived at the most serious and important moment of his trial,—the instant of clearing up his honour, or of sinking under a load of infamy and guilt,—what is there not required to enable him to act with judgment and deliberation? Probably, uninformed of letters, a private sentinel, or serjeant!—Possibly a subaltern, as yet in youth, and unacquainted with the strictness of discipline and order!—Unaided, perhaps, by counsel or

by friends ;—left to the wild, unconnected dictates of a bewildered fancy,—how, and in what manner, is he to effect one salutary purpose ?—Unhappy being !—distracted with fear, and sinking under apprehension, whither is he to turn himself, to escape the threatening destruction ?—Fate hangs dreadful o'er his head !—He hears nothing,—he knows nothing !—He implores for mercy,—he submits himself to Heaven, and the equity of his judges. You, therefore, who are ordained to preside over, and decide the destiny of your fellow-creatures, protect him with your counsels,—lead him with a cautious hand through the mazes of his defence,—and as, in the hour of prosecution, you aimed to fix his guilt ; so, in the moment of exculpation, assist him in the vindication of his innocence.

In the course of the prosecution, as hath been already shown, the Judge Advocate

vocate officiates as Counsel for the King, and in the defence, he is allowed to restrain the delinquent from advancing any thing to criminate himself. This, in some cases, may be too circumscribed a power. But, however, as the court themselves have the privilege of trying every means to exculpate the prisoner from guilt, it is less to be regretted that the *Law-Officer* is not declaredly permitted to afford him that assistance which he might stand in need of. Not that indeed it could be of any material service to him, except in those instances when counsel could not be procured; as otherwise, a criminal at a General Court Martial, as well as a criminal in any other court, hath a right to the benefit of advice from those capable of assisting him. When the jury is sworn, (says an eminent lawyer *) if it be a cause of any consequence, the indictment is

* Blackstone, Vol. 4. P. 348.

usually opened, and the evidence marshalled, examined, and enforced by the counsel for the Crown, or prosecution. But it is a settled rule at common law, that no prisoner shall be allowed a counsel upon his trial, upon the general issue, in any capital crime, unless some point of law shall arise proper to be debated: A rule, which (however it may be palliated under cover of that noble declaration of the law, when rightly understood, that the *judge* shall be *counsel* for the *prisoner*; that is, shall see that the proceedings against him are legal and strictly regular) seems to be not at all of a piece with the rest of the humane treatment of prisoners by the English law. For upon what face of reason can that assistance be denied to save the life of a man, which yet is allowed him in prosecutions for every petty trespass? Nor indeed is it, strictly speaking, a part of our ancient law: for the *Mirrour* having observed the necessity of counsel in civil suits,—

“ who

" who know how to forward and defend
" the cause by the rules of law, and
" customs of the realm", immediately
subjoins—" and more necessary are
" they for defence upon indictments and
" appeals of felony than upon other ve-
" nial causes." And, to say the truth,
the judges themselves are so sensible of
this defect in our modern practice, that
they seldom scruple to allow * a prisoner
counsel, to stand by him at the bar, and
instruct him what questions to ask, or
even to ask questions for him, with re-
spect to matters of *fact*; for as to mat-
ters of *law*, arising on the trial, they are
intitled to the assistance of counsel.

The prisoner being thus assisted by
the aid of counsel, (as we can safely say
he may be, under the sanction of such
high authority) and the examination of
his witnesses being at an end, the Judge

* Blackstone.

Advocate

Advocate is allowed to reply * to his defence ; not, however, upon any *new* subject matter that shall appear, but strictly to that which shall relate to the original charge ;—and in like manner as the Judge Advocate, the prisoner may be indulged in answering him in rejoinder. For the law of England industriously endeavours to investigate truth, at any rate. It varies its examination of facts, according to the nature of the facts themselves : This being the one invariable principle pursued, that as well the best method of trial, as the best evidence upon that trial, which the nature of the case affords, and no other, shall be admitted in courts of justice. The prisoner is likewise permitted to adduce the testimony of persons of reputation, in support of his character and the integrity of his life ; for if for mutiny, desertion, or any other crime, there shall be nothing but pre-

* Lord George Sackville's Trial.

sumptive

sumptive proof adduced, the evidence of his former good conduct, will indisputably serve to influence a decision in his favour.

In transgressions punishable by Martial Law, the evidence, in general, is so positive and clear, that it seldom or never happens, that a criminal is convicted without more than a sufficiency of legal proof. One* witness, however, (if credible, and none other are to be had) is evidence enough to a jury of any single fact; though undoubtedly, the concurrence of two, or more, would strengthen and corroborate the proof. Presumptive + evidence even hath been deemed sufficient for condemnation, although the prisoner hath absolutely denied the fact. This must certainly be admitted in many cases; as, for instance, in that of mur-

* Blackstone.

+ Ibid.

der,

der, when the deed is usually perpetrated in secret, and when, consequently, no witness can be produced; but then, it is a proof that should be warily allowed: guilt may, undoubtedly, be brought to punishment by it, but innocence may as often be its victim.

The law, careful of the rights, and watchful over the safety of individuals, hath wisely ordained, that prisoners shall be admonished not to criminate themselves, by an acknowledgment of their guilt. The power of coercion it would have exerted only on the clearest proof: *Preventive* justice being on every principle of reason, humanity, and sound policy, preferable in all respects to *punishing* justice. The confession, † however, of the fact, before a magistrate, a justice of the peace, or a secretary of state, hath at all times been admitted as evidence

† Hales, P. C. 102, 262, 263, 264.

against

against the defendant, being the party confessing, but not against others*; though it hath been an universal and established custom, in those prosecutions when a man's confession hath been adduced to his own disadvantage †, that the whole, and not particular parts, shall be produced before the court.

In the case of informers, whose veracity should ever be suspected, and whose conduct should carefully be watched, experience shews the necessity of caution in the admission of their evidence. Can the wretch, who from the dread or certainty of punishment, sinks into that basest of all human characters, the betrayer of the secrets of his friend, or who, spurred by the hope of gain, aims, for a few pounds, at the life of his fellow-creature,—can he be trusted in the

* State Trials, Vol. 3. f. 89.

† Hawkins, P. C. 6, 2. c. 46.

testimony

testimony he may advance in the prosecution of his treachery? Mercy tells us, no. The attributes of justice, and of fair benevolence, are decked in robes of kindness and humanity: calmness and deliberation attend them in their course; suspicion is awake, but unerring truth is ever more their guide. And yet the written deposition of an informant, subscribed to, and taken upon oath, before a justice of the peace, upon a commitment for a capital offence, is * admitted as evidence at the trial of that offence; provided, upon oath, and to the satisfaction of the court, it shall appear, that he, (such informant) is † dead, unable to travel, or prevented from appearing through the means or machinations of the prisoner, ‡ and that the deposition which is then offered in examination, is literally the § same with

* State Trials, Vol. 1. f. 265.

† Hales, P. C. 262, 263.

‡ Keeling's Reports, 55.

§ Ibid.

that

that fworn to before the magistrate. But it is not a sufficient reason for authorizing the admission, or the reading of such a deposition, for the prosecutors to say,—*Search hath been made, but the informant is not to be found.* This, even on oath, is not enough: the legal disabilities above-mentioned must be proved, otherwise the information is of no * avail.

The law furthermore declares, that a prisoner may, in exculpation of himself, or in the desire of establishing a conviction of the little reliance to be placed on the deposition of a witness, call † for the evidence which that witness shall have given on oath, before a magistrate; and in the comparison of that with his *viva voce* evidence before the court, if a variation can be found, he may plead that

* Keeling's Reports, 55.

† State Trials, Vol. 2. f. 622 to 627, 644, 647,
657.

variation in support of his own character and justification. And to the same end, should a witness at one trial, vary * from his evidence at another, both trials tending to the same matter of fact, such variation may be advanced as good invalidation of the testimony of the evidence which he shall depose at the second trial. How far hearsay evidence should be admitted, is a subject of such complicated discussion, and involves in its consequences such a variety of reasoning and argument, that it is hard to determine on it. In Martial Law, the promptitude of decision might lead one to suppose, that hearsay evidence might be admitted. But in Martial Law, as in every other code of jurisprudence, however the letter of it may ordain, the spirit of it is certainly repugnant to the admission of proof of such flimsy texture: Nor, indeed is there a necessity for General Courts Martial to adopt an evidence,

* State Trials, Vol. 2. f. 343, 344, 528, 529.
even-

eventually filled with injury and injustice. Equity, in its true and genuine meaning, being the soul and spirit of all law : *positive* law being construed, and *rational* law being made by it. In the one, equity being synonymous to justice ; in the other, to the true sense, and sound interpretation of the rule. Positive and direct testimony, as I have already said, is never found wanting at a military trial :—Officers and soldiers are public in their acts ;—their crimes are generally notorious, and, therefore, the eyes of the many cannot but be set upon their transgressions. That which a prisoner, however, hath been heard to * say at a time antecedent to his commission of a crime, may be received as evidence by a court, to the end, that it may invalidate or confirm the arguments he may advance in the course of his prosecution and defence.

* State Trials, Vol. 2. f. 254.

In trials for high treason, where the law is not only peculiarly direct, but circumstantial, as to the nature of the proof which is required, previous to the condemnation of a criminal, (and in which, for the same acts that make a man accessory in felony, make him a principal, such being the heinousness of the crime) the similitude of hand-writing hath as frequently been rejected + as admitted as evidence on the part of the Crown. The prevalence of forgery hath been the opprobrium of this, as well as of every other civilized nation, from the earliest period of time. Desperate in his fortunes, or sanguine in his revenge, the villain meditates in secret the despoiling of another of his property or life. Nothing more feasible than the acquisition of stile, or the manner of a man's writing. As a painting, his signature is to be copied; his very ideas, by attention and ability, are to be

+ Skinner's Reports.

caught;

caught : in a word, innocence cannot save, nor loyalty protect him, should a similiarity of writing be indiscriminately admitted as a positive confirmation of his guilt. Usage, indeed, establishes that a similitude of hands is no evidence in a criminal case, although it should be capital, unless the papers shall be * found in the possession of the person ; then the law accounts it a corroboration of the charge, but otherwise, their authenticity is doubted, and they cannot be received as articles of crimination against the prisoner.

The admission of the evidence of husband and wife against each other, being in law but one person, hath been unusual ; though in cases of absolute necessity, it hath sometimes been received †. But an exception to a parent, or to kindred

* Skinner's Reports.

† State Trials. Trial of Lord Audley.

in general, although a good cause of challenge against a juror, is no cause of challenge against * a witness. The law therefore allows a father to be a competent witness for or against his son, or *e converso*; and a master for or against his servant, or *e converso*. In all these instances, however, and in all others which may present themselves at a General Court Martial, the court itself hath the discretionary power of regulating the degree of credit with which each evidence shall be received.

In the former part of this tract, the exceptions which a prisoner is entitled to plead, either peremptorily or otherwise, against jurors, are particularly enumerated; nor is it of less utility to be acquainted with those + which are in common law admitted against witnesses on the trial. The most material are, the

* Hales, P. C. 276, 277.

+ Coke upon Littleton, Raymond, Rolle, M. Rep. parties,

parties having been convicted of treason, felony, piracy, premunire, perjury, or forgery ; their being in judgment in attaint for giving a false verdict, or for being in a conspiracy, at the suit of the King ; their being adjudged, for any crime whatever, to stand in the pillory, to be whipped, or to be branded, and this by a court of competent jurisdiction. But these exceptions are only of avail while the decrees continue in full force ; nor are they admissible, unless the records of the decrees shall actually be produced in court *. The law, however, allows, that in all cases, it is sufficient for a witness to be either a gainer or a loser by the issue of the case, whether immediate or consequential, to disqualify his testimony ; and yet, in General Courts Martial, the evidence of inferior officers is admitted against officers of superior rank ; but this is found necessary to subordination : Law could

* State Trials, Vol. I. f. 268.

not exist, if amongst a set of military men the same exactitude and precision were observed, as is found to be beneficial in the courts of Chancery and King's Bench. In all corps of officers preferment is in view: from the highest to the lowest, a something more advantageous or honourable is always to be expected. When vacancies happen, those vacancies must be filled up; promotion consequently goes on,—and the whole may be thereby justly considered as interested in the fate and destiny of each other. Officers, therefore, being unrestrained by any legal incapacity of supposed interest-edness in their depositions, are explicitly to speak to facts, but at the same time are to be guardedly restrained from the avowal of any act, which eventually may tend to the crimination of their own reputations.

An infant * may be excepted against, as being of years inadequate to know-

* Hale's, P. C. 263.

ledges.

ledge; but villeins or bondsmen, a class of people indeed no longer known in England, are free to give their testimonies, and their evidence must be admitted †. Accomplices likewise, who have not been indicted for the crime ‡, have been declared unexceptionable witnesses, and it hath been over-ruled, that accomplices who are indicted, are good witnesses for the King until they are convicted §: but when, or upon what occasion, such dread-extorted evidence can in the spirit of equity be received, is a matter that I am ignorant of. Men of science and ability may, in necessity, find a cause for manifold deviations; but judges in a Martial Court of Law, are happily disengaged from an adherence to a rule, which eventually may entail destruction on the unfortunate. Accom-

† State Trials, Vol. 1. f. 253.

‡ Idem, 723.

§ Keeble's Reports.

plices, in every light they may be placed, cannot but be seen in guilt; but if in addition to their first crimes, they afterwards give evidence against those by whom they have been entrusted,—if, in the excess of baseness; after the commission of their transgressions, they exert their faculties to crush their unsuspecting brethren, and screen themselves, how little is their evidence to be credited!—Examine, therefore, with tenfold rigour such witnesses, if they shall appear before you;—search with a probing hand into the recesses of their souls;—doubt and investigate the commonest circumstance they advance;—and as they have already proved themselves detestable amongst men, so look upon their evidence (when truth cannot be discriminated) as the effusion of depravity itself.

In instances of insanity, and while the person hath laboured under the effects of
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the malady, exceptions have been admitted against him as a witness; although in his lucid intervals, and during the time of his understanding, his testimony hath been received *. This likewise is a matter of weighty consideration, and should be carefully attended to. Few men labouring under the misfortune of periodical or casual loss of senses, can recover themselves so much when their reason returns, as to see things in a clear and undistorted point of view. Moreover, how many are there, who, rational in their appearance, and connected even in conversation, are yet so miserably fallen from what they were, as on some certain points to fly into the utmost extravagance of phrenzy. Such evidence, therefore, should be cautiously received: The law perhaps admits, but humanity most assuredly rejects it.

* Hale's P. C. 278.

By

By the common, as well as by the Statute law of England, both judges * and jurors are competent to appear as witnesses at a criminal prosecution; and in like manner, the members of a Court Martial are authorized to give their depositions upon oath. This, though unavoidable in many instances, should be as often guarded against as possible. No man, however upright and determined in his own mind, but may fall into a wrong train of thought, from being by accident acquainted with the merits of a cause, and thereby being prepossessed in some degree as a party. To this end, care should be had in the nomination of the court, to omit, if possible, those officers who eventually may be called upon; and the more especially, as no person would wish to sit in judgment upon another, whose guilt he was convinced

* Blackstone.

of,

of, or whose punishment he saw inevitable.

All witnesses, in a criminal court of law, being obliged to give their evidence with precision, and *viva voce*, no matter prepared in writing is admissible; neither is a witness permitted to read it as his deposition: he may, however, have reference to notes; this leaves the channel open for cross-examination. The evidence of either party may be thereby brought in contradiction, and an important turn be given to a prosecution. Witnesses also are strictly to adhere to matters of fact; evidence signifying that which *demonstrates*, makes clear, or ascertains the truth of the *very fact*, or point in issue, either on the one side or the other, and no evidence being admissible to any other point. Opinions, although admitted by some tribunals, are doubtless contradictory to equity, when taken in the abstract, or general point of view.

view. Instead of one, or more, according to their appointment, a prisoner in opinions finds a hundred judges ; each man, however unauthorized, acquits or condemns, according to his own particular sentiments. “*The truth, the whole truth, and nothing but the truth,*” is thereby radically discarded. *Belief*, which is repugnant to their *oath*, is substituted in the room of *certainty*, and the witnesses, unknowingly, are led to commit what may be styled a trespass, if not *a perjury* itself. And in proof of this, it may not be amiss to take notice of what Lord George Sackville advanced at his trial, when the opinion of Colonel Fitzroy was demanded. ““I do not think it,” said he, “a fair question to ask only a “matter of opinion. I do not mean it “to prevent the truth coming out; I “mention it merely for the dignity of “the court; and for the sake of the method of proceeding in Courts Martial. “The witnesses are to lay down facts “for

“ for your information, and your judgment is to decide upon them. For the consequence of a court is not to be so let down, as to form their determinations,—their resolutions, upon opinions *.” A contradiction indeed would seem to appear to this, on Colonel Sloper’s being allowed to give an opinion “as to the condition in which he saw Lord George Sackville,” but then that opinion, as was observed by the Judge Advocate, was *collected* from a *circumstance* which the witness *saw*, and thereby might be termed, in a degree, an *evidence* of the *fact* †.

Although the evidence which is intended more immediately to exculpate a prisoner on his trial, is generally confined to the moment when he is put upon his defence, yet if any thing shall drop

* Lord George Sackville’s Trial, Page 31.

† Lord George Sackville’s Trial, Page 38.
from

from a witness during the course of the prosecution, or while in cross-examination for the Crown, that can in any wise be conducive to the acquittal of the criminal, such matter, however in his favour, shall carefully be admitted, and in the decision on the merits of the cause, it shall without reserve be considered and received as explicit testimony in his behalf.

In the obscurity with which the subject of military jurisdiction hath been surrounded, and in the ignorance in which mankind in general have remained with respect to the extent of its power, it is not to be wondered at that inattention should have been paid to it by those, who not conceiving themselves amenable to its authority, have not acknowledged themselves subject to its decrees. I allude to witnesses subpoenaed, and who, in contempt of court, contumaciously declined giving their attendance, and who

who have otherwise conducted themselves with refractoriness and disrespect. No witness, we will acknowledge, unless his reasonable expences be tendered to him, is bound to appear at all *; nor if he does appear, is he bound to give evidence till such charges are actually paid him; that is, if he does not reside within the bills of mortality, and is summoned to give evidence within them. But this particularly concerns the usage of Courts of Common Law; a Court of Martial Law is different: the jurisdiction of a Court Martial in England being confined to matters merely military, namely, to breaches of the Articles of War, it very rarely happens that the testimony of any civil person is necessary to convict the offender. And in those places abroad (such as Gibraltar) where there is no other law than the Law Martial for English subjects, and where

* Blackstone, Vol. 3. Page 368.

Courts

Courts Martial are therefore held for other offences, the case in point may not readily occur, since the English inhabitants are subject to military discipline. The little probability of the evil, may therefore possibly be the reason why no special provision has been made for it by law. But certainly (and it is to be regretted that it is so) no such provision being made, a witness not subject to Military Law, who refuses, on being summoned to attend a Court Martial, or who negligently with-holds his attendance, cannot be imprisoned by the court. to deliver him over to military custody, would be false imprisonment; and, moreover, he would be enlarged on a Habeas Corpus: nor can he be delivered over to the sheriff, or any other civil magistrate; inasmuch as the members composing the court have no authority to issue any warrant which can justify the civil magistrate in detaining him. But upon the general principles and analogies

gies of law (though perhaps there be no analogous determination) a witness summoned to appear before a Court Martial, having necessary evidence to give, and without any reasonable cause with-holding his attendance, or contumaciously refusing to attend, may be *indicted* for an offence *against public justice*; because when the legislature gives a court jurisdiction to administer an oath, it necessarily implies a *duty* in the subject to appear to give evidence; and every *neglect* of a public duty is *punishable* by *indictment*, unless when the act prescribing the duty, points out a *special mode* of punishment. Witnesses, therefore, who may be refractory and contumacious, should never be permitted to escape the severity which the law ordains for those who would screen offenders, and thereby elude the wholesome regulations of their country.

Military, Maritime, and Ecclesiastical Laws spring from the same root ; consequently, they are entitled to the same fostering attention. The Courts of Common Law, as has been already observed, are sometimes obliged to use a parental authority in correcting the excesses of the inferior courts, and keeping them within their legal bounds ; but, on the other hand, they afford them a parental assistance, in repressing the insolence of contumacious delinquents, and rescuing their jurisdiction from that contempt, which for want of sufficient compulsive powers, would otherwise be sure to attend it.

Hitherto we have confined our enquiries to the formation of the court, the method of its proceeding, and the examination of the witnesses, both on behalf of the Crown, and of the prisoner. We now come to the last and most solemn act, the fixing of the *crime*, and the pronouncing of the *sentence of the law* upon it. Here, indeed,

indeed, deliberation is required. The facts have hitherto appeared before us in order to be arranged, scrutinized, and compared; but they are now to be decided upon agreeably to the laws of justice and of mercy. At a moment so awful as this, therefore, and when the fate of one in the same rank of being with ourselves is ultimately to be fixt,—when the avenging power of Providence is thus entrusted in our hands, for the benefit of the community at large,—how cautious should we be in our determination!—how attentively should we investigate each open source, each latent principle of action!—Nothing should be forgotten. Coercion, in all its parts, should carefully be weighed;—the necessity of punishment should calmly be considered;—but, above all, *mercy* should be embraced as the benignest attribute of Heaven. Before we proceed then on this most awful of all our duties, let us acquaint ourselves with the principles of

guilt in general. Let us bear in mind, that the Statute Law of England does very seldom, and the Common Law never, inflict any punishment extending to life or limb, unless upon the highest necessity : and that the Constitution is an utter stranger to any arbitrary power of killing or maiming the subject without the express warrant of law. Let us teach ourselves to discriminate between those who are fit objects for the severity of the law, and those, who from certain causes, are acknowledged to be entitled to its lenity and forgiveness: the final cause of human punishments being, a *precaution* against future offences of the same kind ; and not an *atonement* or *expiation* for the crime committed. Amongst the latter are those who are under a natural disability of distinguishing *good* from *evil*, as infants under the age of discretion, ideots, and lunatics, none of whom are

* Hawkins' Plea. Cr. B. i. C. 2. Hales' Plea.
Cr. 10. 43, 65.

punishable by any criminal process whatsoever ; neither is a person who has committed a capital crime, if he becomes *non compos* before conviction, to be arraigned, nor if after conviction, to be executed †.

But at the same time that the law is thus tender with respect to criminals who labour under a natural and inevitable deprivation of sense, it is equally as severe against those who by intemperance reduce themselves to a temporary insanity. A man, therefore, guilty of a crime through the effect of voluntary drunkenness, is to be punished for it as if he had been sober ‡. Also he who incites a madman to commit a crime, is to be considered as a *principal* offender, and is to be punished as if he had perpetrated the deed himself ||. The law declaring, that

† Ibid. Coke's Institutes, C. 4. 6.

‡ Coke upon Littleton. Hales' Pleas Cr.

|| Ibid.

every man in his sound mind, and at the age of discretion, is to know the law, and consequently, that he is punishable by it if he transgresses the boundaries it hath established. Besides *principals*, there are those concerned in some trespasses who are called *accessaries*. An accessory is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either *before* or *after* the fact committed. As to the point who is accessory *before* the fact, Sir Matthew Hales* defines him to be one, who being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit it. Herein *absence* is necessary to make him an accessory; for if such procurer, or the like, be *present*, he is guilty of the crime as *principal*. As to an accessory *after* + the fact, he is a person, who knowing a felony to have been com-

* Hales' Pl. Cr. 615, 616.

+ Hawkins' Pl. Cr. 316.

mitted,

mitted, receives, relieves, comforts, or assists the felon: and generally any assistance whatever given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes the *accessor* an *accessary*. For if a parent assists his child, or the child his parent,—if the brother receives the brother, the master his servant, or even the husband relieves his wife, who have any of them committed a felony, the receivers become accessories *ex post facto*. † Accessories, by the general rule of the ancient law, are to suffer the same punishment as the principals: if one be liable to death, the other is also liable. § But why then, says Judge Blackstone, are such elaborate distinctions made between accessories and principals, if both are to suffer the same punishment? || For these reasons;—to distinguish the nature and de-

† Blackstone, Vol. 4. P. 37.

§ 3 Inst. 188.

|| Blackstone, Vol. 4. P. 39.

nomination of crimes, that the accused may know how to defend himself when indicted; the commission of an actual robbery being quite a different accusation from that of harbouring the robber. And because, though by the ancient common law, the rule is as before laid down, that both shall be punished alike, yet now by the statutes relating to the benefit of clergy, a distinction is made between them; accessories *after* the fact being allowed the benefit of clergy * in all cases, excepting horse-stealing, and stealing of linen from the bleaching-grounds, which is denied to the *principals* and accessories *before* the fact, in many cases; as, among others, in petit treason, murder, robbery, and wilful burning †. And, perhaps, if a distinction (which certainly may be the case at a Court Martial) were constantly to be made between the punishment of

* Statutes, 3 Eliz. 18 Geo. 2,

† Hales, P. C. 615.

principals

principals and accessaries, even *before* the fact, the latter to be treated with a little less severity than the former, it might prevent the perpetration of many crimes, by increasing the difficulty of finding a person to execute the deed itself, as his danger would be greater than that of his accomplices, by reason of the difference of the punishment ‡. A man may be indicted as *accessary* and acquitted, and yet be afterwards indicted as a *principal*: § for an acquittal of receiving or counsellng a felon, is no acquittal of the felony itself; but it is a matter of some doubt, whether if a man be acquitted as *principal*, he can be afterwards indicted as *accessary* *before* the fact, since those offences are frequently very nearly allied, and therefore an acquittal of the guilt of one, may be an acquittal of the other also ||. But it is clearly held, that one

‡ Becaria, chap. 37.

§ Blackstone.

|| Hale's Pl. Cr. 625, 626.

acquitted

acquitted as principal may be indicted as an accessory *after* the fact; since that is always an offence of a different species of guilt, principally tending to evade the public justice, and is subsequent in its commencement to the other *.

These points being thus understood, and the court being cleared, the Judge Advocate reads the proceedings, or sums up the evidence, as may be most agreeable to the court, in each case elucidating such parts as may appear either to himself, or to the different members, worthy of their attention. That done, and all in readiness for judgment, he puts the following question to the respective members, beginning, (as in the trial of a Peer before the House of Lords, which is the highest of all courts of honour) with the youngest:—*From the evidence given for, and against the Prisoner, and from what he has said in his defence, are*

* Blackstone, Vol. 4. P. 40.

you

you of opinion that he is guilty, or not guilty, of the crime which is exhibited against him?

—and as they declare their sentiments, he writes them down severally on a slip of paper. But here it is to be observed, that if in the course of the prosecution it shall appear, the prisoner is innocent of the *capital* offence exhibited against him, he yet is liable to be found guilty in a lesser degree, as must be particularly specified in the verdict. As instead of *murder*, —*homicide* or *manslaughter*, &c. and instead of *desertion*, being *absent without leave*. But in all instances, his acquittal of the capital charge must be inserted; neither can he be convicted upon any extraneous matter. Should the majority, on the casting up of the opinions, be found on the side of mercy, and their votes be *not guilty*, the prisoner is accordingly acquitted; but should they be otherwise, the guilt is declared, and those who have condemned him*

* Adye.

(for

(for it cannot be supposed that those who have acquitted will assign him any punishment) are to pass sentence upon him; always recollecting, that no sentence of death is to be given against an offender by a General Court Martial, unless two-thirds of the members present + shall concur therein; and that no person or persons shall be adjudged to suffer any punishment, extending to life or limb, in *time of peace*, except for such crimes as are expressed to be so punishable by the Articles of War. The Articles of War being in fact the *Lex Scripta*, or Statute Law; as the usages and customs of war may be denominated the *Lex non Scripta*, or Common Law. The manner of passing sentence is thus:— The Judge Advocate beginning with the junior of those members who have found the prisoner guilty, proceedeth in these words. *Having declared it as your opinion, that the prisoner is guilty of the crime*

+ Articles of War.

of

of —————, what is the punishment you would have inflicted upon him?—And as the member adjudges, which may be either to death, corporal punishment, or transportation ‡, the Judge Advocate writes down the words, and so on, 'till he finisheth with the *senior*. This being done, the Judge Advocate reads aloud the different opinions,—sums up the respective judgments, and then having drawn out the *sentence* agreeably to the sentiments of the court, he is advised by a writer of reputation on the subject of Martial Law §, to preserve the opinions which shall be given, as vouchers, should a revisionary prosecution be commenced in a common court of law. For courts of Common Law, as Sir Matthew Hale lays it down, have superintendency over the King's Ecclesiastical, the King's Military, the King's Maritime,

‡ Lord George Sackville's Trial, Page 10,
§ Adye.

and the King's Academical Laws ; to the end, that they may be kept within their jurisdictions, that it may be determined when they exceed them, to restrain and prohibit such excess, and (in case of contumacy) to punish the officer who executes, and in some cases, the judge who enforces, the sentence so declared to be illegal. In the sentence, however, care should be had at all times to omit the word *unanimous* ; for though it undoubtedly sounds in favour of a prisoner, should he be acquitted, it certainly violates the obligation of the oath taken by each member at the formation of the court, which particularly enjoins them not to *disclose* the vote or opinion of each other.

How far the author of the essay above-mentioned on General Courts Martial, is right in recommending to the Judge Advocate to preserve a memorandum of the opinions which shall be given in the course

course of passing sentence on a prisoner, I know not; I would willingly acquiesce with him in opinion, if in my power; but I own it appears to me, that if any person is warranted in preserving a record of that kind, it is a member of the court; for a Judge Advocate not being principally concerned in the judgment which is passed, he cannot possibly be called upon to answer for the consequences which may ensue, whereas a member is liable to prosecution. A Judge Advocate may, it is true, be conceived in the eye of law, the most unexceptionable witness, as not being a party concerned; but then as he is not subject to any penalty, I cannot see the occasion why he, exclusively, should provide against contingencies. In trials in common therefore, it may not be amiss for a Judge Advocate to trust eventually to his memory. It rarely happens that the proceedings of a Court Martial are brought into litigation in the King's Bench; but even when

when they are, a Judge Advocate, as any other witness, can only be made to speak to the best of his knowledge and belief. Evils, moreover, of great magnitude might arise from a practice of this nature. Papers might be mislaid, or death might occasion them to be inspected by those who from wantonness or interest might give them to the public, and thereby disclose the opinions of a court; which, to keep concealed, the Legislature hath been at uncommon and most gracious pains.

Thus being arrived at the conclusion of the proceedings of a trial at a General Court Martial, we shall next come to a few points which it will be necessary to understand, as being immediately connected with the subject. The fair proceedings of the court being examined, and signed by the President and Judge Advocate, (the latter himself always inserting the sentence or sentences) and sent

sent or delivered to the power by whose authority the court hath been assembled; the court then proceed to the trial of other offenders, or remain *in orders* as a court, waiting the result of the opinion of that power by whom they have been constituted. For Courts Martial being held by the same authority as other courts of law, the person empowered to cause them to be held, possesses the prerogative of *once* returning them their *sentences* for *revision* *, and of *pardoning* and *remitting* the punishment; but not of *altering*, or adding to the judgments which shall have been given. It being a fundamental principle of the Common Law of England, of which the Martial is a branch, that a man cannot suffer more punishment than the law affords, but that he may suffer less; that the laws cannot be strained by partiality to inflict a penalty beyond what the letter will warrant; but that in cases where

* Articles of War.

the latter induces any apparent hardship, the Crown has the power to pardon. The most amiable prerogative of the Crown, as an able writer has it, is the granting of pardon. Law cannot be frach'd on principles of compassion to guile; yet justice, by the constitution of England, is bound to be administered in mercy. This is promised by the King in his coronation oath, and it is that act of his government which is the most personal, and most entirely his own. The King himself condemns no man; that rugged task he leaves to his courts of justice. The great operation of his sceptre is *mercy*. Neither hath he, who orders a Court Martial, the power to cause an offender to be tried a second time for the same trespass nor after his conviction or acquittal by a court of judicature, to punish him otherwise than by cashiering*, and if he doth so, it will be in the course of his trial.

* Articles of War.

However

However clear and explicit a trial at a Court Martial may seem, and however established the offences and offenders may be supposed who come immediately under its jurisdiction, it hath been doubted (for the case hath occurred in the East Indies) whether a General, as commander in chief of an army, not in the field, and consequently not having a warrant empowering him to cause Courts Martial to be held, is liable to be tried by a Court, with a Colonel as its President, as another officer. A Colonel, indisputably may be arraigned before a tribunal with a Major at its head. This point, however, may easily be ascertained upon a due consideration of the principles of Martial Ordination. The principles and axioms of law being general propositions, flowing from abstracted reason, and not accommodated to times or to men; for in law, partiality can have little scope. It is universally and well known, and is the same for all ranks and degrees; it

follows as a regular conclusion, from the premises of fact pre-established. The King is authorized by law to grant his commission for the holding of General Courts Martial, and may delegate that power to officers commanding his armies or garrisons, as we have already observed, (subject, however, to the restrictions contained in the Mutiny Act, which fix the rank and number of the officers who shall compose them). This rank of the president and members of the court not being required by the Act to be varied according to the rank of the offender, it is in his Majesty's breast to vary it at pleasure, so as the rank required by the Act is not violated. But it is the fixed and universal custom of the army, to try officers of a very high rank in a solemn and awful manner, and by a court composed of some officers, at least, if not of all, of the same degree. But, indeed, this question is not applicable to any probable case in the King's, though it is

in

in the East India Company's service, in which the several Governors and Councils are vested with paramount military authority; for before a man can be tried, he must, in general, be arrested by a superior *, and therefore if a commander in chief of an army abroad commits a military offence, there is no remedy against him, but by an application at home to the Secretary at War, to inform the King, (or the power under whose authority he acts) of his offence; in which case, if credit be given to the accusation, he must be recalled, in order to be tried and punished. For though the King may, consistently, with law, supersede him, and issue a commission to his successor to empower him to appoint a court for his trial, consisting of those officers who may have served under his command, yet it would be inconsistent with general practice, sound policy, and even, it may be said, with justice.

* Articles of War.

It has likewise been doubted, whether an officer, suspended the service for a specific time, by the sentence of a General Court Martial, or otherwise, be liable to trial during the continuance of such suspension; or whether he can commit a trespass that can be strictly deemed amenable to Martial Law. The question is a nice one, and yet it seems not very difficult to be answered. Suspension is a specific punishment, for a specific crime; but it is a punishment which doth not entirely free a man from his military obligations. On the contrary, he still is considered as in the service; he holds his commission, and at the expiration of the term of suspension, becomes a perfect man again. If therefore during the continuance of this chaf-tisement, he should attempt to go over to the enemy, to desert, or to hold treasonable correspondencies, he certainly is, in such cases, to be dealt with according to Martial Law.

Suspension,

Suspension, which was in the military line probably intended to operate as pecuniary fining was in that of the Common Law, can neither be considered as deprivation nor degradation. It does not divest an officer of his military character, though it puts him under a temporary incapacity to exercise the duties of his station : he still possesses his rank, though he does not reap any immediate advantage from it. It in fact may be looked upon and considered as borrowed from the Ecclesiastical system of jurisprudence, which admitted suspension as a minor excommunication.

One stubborn difficulty, however, seems to present itself from suspension ; and that is the article of pay and allowance. For if an officer shall have been so far punished, as besides being suspended from the exercise of the authority annexed to his rank, to have the pay of his allowance also suspended, he certainly

seems warranted to plead such suspension in bar to the proceedings of a Court Martial ; there being always an implied contract between a soldier and his employer, that in consideration of certain pay and advantages granted by the one, the other shall submit to military discipline ; and the obligation being mutual, when one fails in the performance of his part, he frees the other from the observance of his ; therefore, when the pay and other advantages are suspended by the employer, the subjection to military discipline would seem also suspended. But this difficulty is easily removed, from the circumstance of the officer so suspended, still holding his commission ; and from his submitting himself to the punishment which hath been inflicted on his transgression. The latitude of this principle hath even been seen to go farther, and under the sanction of such authority, that (since his Majesty hath been graciously pleased to direct, in cases of doubt,

doubt, members of a Court Martial shall be guided by their consciences, the best of their understandings, and the custom of war in the like cases) it may be said to establish a precedent, which may with safety be appealed to. I mean the trial of Lord George Sackville, who, at the time he was put upon the *judgment* of a General Court Martial, had (so dear is the honour and reputation of a soldier) *neither military employ nor commission* under his Majesty; and yet he was deemed entitled to an awful and solemn investigation of his conduct: application, indeed, having been previously made in his name, and he having declared himself willing to abide by the decision of the Court. In a word then, it may, without risking too much, be asserted, that an officer under suspension, may be considered as *strictly amenable* to Martial Law for any trespass or transgression he shall commit.

Another

Another matter of equal importance, and hitherto of serious litigation, hath been the privilege of examining witnesses. Many have confined it to the Judge Advocate, the members of the court, and the prisoner; but others have admitted the accuser to propound questions, as if he alone were the prosecutor. The right, however, of examining witnesses at a Court Martial belongs, in legal strictness, to the Judge Advocate, the members of the court, and the prisoner. To the Judge Advocate, as prosecutor for the Crown *; to each member of the court, for the information of his own conscience; and to the prisoner, for his defence. Yet if an officer, witness to the misbehaviour of another, prefers an ac-

* Pleas or suits being regularly divided into two sorts;—the pleas of the Crown, which comprehend all crimes and misdemeanors wherein the King (on behalf of the Public) is the *plaintiff*; and *Common Pleas*, which include all civil actions, depending between subject and subject.

cusation against him, and the King, or his delegates, order a trial solely upon the faith of such accusation, without any other information or presumption of guilt, the Judge Advocate cannot, with decency, refuse the prosecutor's assistance in the conduct of the trial, and the court cannot, in justice, object to it ; because in many cases the charge is not to be sustained without an examination guided by a more particular knowledge of the circumstances than the Judge Advocate or court can possibly be acquainted with ; and it would indeed be a great obstruction to the public service in military cases, if an officer were deterred from bringing offenders to justice lest, through the ignorance or corruption of a Judge Advocate, a prosecution should miscarry ; or if (after having run the risque for the public service) his zeal, by the prisoner's acquittal from the charge, should carry the appearance of malvolence. Upon the whole, the man-

mangement

agement for the Crown belongs in law to the Judge Advocate ; at the same time that it appears his duty to receive the instructions, or at least, to communicate with the *accuser*, who is supposed to be the best judge of the evidence necessary to support his own accusation. But it is a very delicate situation for an officer to stand in, and it must be confessed, not an eligible one, where his personal assistance is not absolutely necessary ; because it carries with it the air of persecution, rather than of public justice, and pleads strongly for the prisoner in the breast of the court.

Having now explained, with all the brevity in my power, the principles and processes of Martial Law in general, and the duty of a Judge Advocate in particular, I shall here conclude with an observation touching the privilege of that officer, should illegal measures be pursued in opposition to his opinion ; and which

which exonerating him, throws the burden of the act upon the tenacity of those who may carry it into execution. In such a predicament, (and it is no uncommon one) he should *protest*;—not stop the proceedings of the court,—but enter his objections,—and, with reverence, submit them to the consideration of his Sovereign, or to the delegates of his power.

A FOR-

F O R M U L E
 FOR CONDUCTING THE
 PROCEEDINGS
 OF A
GENERAL COURT MARTIAL.

*At a GENERAL COURT MARTIAL held
 in _____, this 1st day of January,
 1784, by virtue of a Warrant from his
 Excellency Lieutenant-General A. B.
 Commander in Chief of his Majesty's
 Forces in _____,*

P R E S E N T,

Colonel C. D. *Prefident.*

Colonel E. F.	Lieut. Col. G. H.
Major J. K.	Captain L. M.
Captain N. O.	Captain P. Q.
Captain R. S.	Captain T. U.
Captain W. X.	Captain Y. Z.
Captain B. D.	Captain O. R.

*Captains S. M. and M. K. Members in
 waiting.*

G. J. *Judge Advocate.*

...*at Lichtenau L. S. called into Court.*...

The names of the different members being called over to the prisoner, Lieutenant L. S., and the prisoner declaring, upon the question being put, that he has no exceptions to any of the members present,—the President, Members, Members in waiting, and the Judge Advocate are duly sworn.

The *Accusation* read, and entered at full length on the proceedings.

Judge Advocate. How say you, Lieutenant L. S. are you guilty of the crime laid to your charge, or not?

Prisoner. Not guilty.

Ensign H. G. sworn: deposeth that,
Esq. Esq. Esq.

The Judge-Advocate, the members of the court, and the prisoner, if he thinks proper, next proceed to question the

the witness; the questions being carefully inserted, together with the replies, as thus:—

Judge Adv. Did you see the prisoner behave in the manner he is accused of?

Ans. I did.

Judge Adv. Did you actually perceive him give the blow?

Ans. I did.

Colonel C. D. Was there any previous altercation between the parties?

Ans. There was.

Colonel C. D. Was the prisoner insultingly gross and abusive in his language?

Ans. He was.

Judge Adv. What were the epithets he made use of?

Ans.

Ans. He called Captain Z. Y. in the most opprobrious terms, &c. &c,

Prisoner. I would ask the witness if Captain Z. Y. did not make use of the most provoking terms, before I either said or did any thing to him that could be construed offensive?

Ans. I did hear Captain Z. Y. make use of very provoking terms to the prisoner, before the prisoner had either said or done any thing offensively to him.

Prisoner. I wish the court to remember this circumstance,—as I shall bring it in proof when I come upon my defence, that I had no inclination to quarrel with Captain Z. Y. and that whatever subsequently passed between us, was the result of passion, occasioned by injurious and provoking treatment.

The court then *adjourned*, until ten of the clock to-morrow morning.

SECOND DAY'S TRIAL.

Second day of January, 1784.

*At a GENERAL COURT MARTIAL then
held, pursuant to adjournment.*

P R E S E N T.

Colonel C. D. *President.*

Colonel E. F.	Lieut, Col. G. H.
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Major J. K.	Captain L. M.
-------------	---------------

Captain N. Q.	Captain P. Q.
---------------	---------------

Captain R. S.	Captain J. U.
---------------	---------------

Captain W. X.	Captain Y. Z.
---------------	---------------

Captain B. D.	Captain O. R.
---------------	---------------

Captains S. W. and N. K. *Members in
waiting.*

G. J. *Judge Advocate.*

Lieutenant L. M. *sworn: deposeth that,*
&c. &c. &c.

Judge Adv. If neither the court or
prisoner have any further questions to
propose, I shall here close the evidence
on the part of the Crown.

The Prisoner put upon his Defence.

Prisoner. As I stand here in a very
trying and awful situation, and as my de-
fence,

fence, whereby I hope to vindicate my character, will necessarily require some preparation, I beg permission to solicit the indulgence of the court for two or three days, that I may have time to collect and arrange the materials I shall have the honour to lay before them:

The court complying with the request of the prisoner, then adjourned until ten of the clock of the morning of the 6th instant:

THIRD DAY'S TRIAL.

Sixth day of January, 1784.

At a GENERAL COURT MARTIAL then held, pursuant to adjournment.

P R E S E N T.

Colonel C. D. President.

Colonel E. F.	Lieut. Col. G. H.
---------------	-------------------

Major J. K.	Captain L. M.
-------------	---------------

Captain N. O.	Captain P. Q.
---------------	---------------

Captain R. S.	Captain T. U.
---------------	---------------

Captain W. X.	Captain Y. Z.
---------------	---------------

Captain B. D.	Captain O. R.
---------------	---------------

Captains S. W. and N. K. *Members in waiting.*

G. J. *Judge Advocate:*

H 2

The

The Prisoner, Lieut. L. S. ordered into Court.

Prisoner. I feel a great and an animating happiness, in this most serious moment of my life, when my honour and reputation are under investigation, that my judges are of that character on which I may rely for every degree of tenderness, delicacy, and justice. I, &c. &c. &c.

The first part of the defence at an end, the prisoner calls in his witnesses, and examines them, in like manner as the Judge Advocate did on the part of the Crown; the Judge Advocate cross-examining where he sees necessary.

Judge Adv. I now shall crave the attention of the court to a few words which I find it expedient to offer in reply to the prisoner's defence. The prisoner has endeavoured to prove, &c. &c.

After

After this, judgment should, in strict propriety, be passed. But as a General Court Martial is a court of equity and honour, as well as of law, they seldom or never, in any period of a trial, shut their ears to a prisoner's vindication of his innocence. The prisoner is consequently indulged in a reply : The Judge Advocate rejoins to him, if he thinks proper.

The court next proceed to judgment.

The court having maturely weighed and considered what hath appeared before them in evidence during the course of the prosecution, as well as what the prisoner, Lieutenant L. S. hath urged in his defence, are of opinion, that he is guilty of the *crime* laid to his *charge*, which being a *breach* of the — article of the Articles of War, they do, in consequence, *adjudge* him to be *cashiered*.

(Signed)

Colonel C. D. President.

(Signed)

G. J. Judge Advocate.

The

The court then adjourned until ten of the clock, to-morrow morning.

*At a GENERAL COURT MARTIAL held
in —— this 7th day of January, 1784,
pursuant to adjournment.*

P R E S E N T.

Colonel C. D. *President.*

Colonel E. F. Lieut. Coll. G. H.

Major J. K. Captain L. M.

Captain N. O. Captain P. Q.

Captain R. S. Captain T. U.

Captain W. X. Captain Y. Z.

Captain B. D. Captain O. R.

Captains S. W. and N. K. *Members in
waiting.*

G. J. *Judge Advocate.*

Captain K. Y. called into Court.

The names of the different members called over to Captain K. Y. and he declaring that he has exceptions to none of the members present,—the President,

sident, Members, Members in waiting, and Judge Advocate, are again duly sworn,

The proceedings then go on as during the first trial. But here it is to be remarked, that whenever members are in waiting, it is right they should regularly sit and be present at all deliberations, even when the court is cleared; as otherwise, the sudden indisposition of a member, in the last stage of a trial, may, for the information of his substitute, occasion its recommencement. Members in waiting, however, have no voice; neither can they be permitted to be present when judgment is passing.

It is likewise necessary to mention, that the *adjournment* from day to day, and the meeting in pursuance thereof, should always be noticed on the proceedings. For, as Lord Chief Justice Hale says, if a commission of gaol delivery issues to A. B. &c. they sit one day,

day, and *forget* to adjourn their commission; or the clerk forgets to enter the adjournment, if a felony is committed the next day, and they proceed in sessions and take an indictment, and give judgment of death against a malefactor, this judgment is erroneous, and the clerk of assizes shall never be permitted to amend the record, and enter an adjournment; and this judgment being erroneous, shall be reversed: but it makes not the judges guilty of murder or homicide; though, in strictness of law, their *commission* was determined by the first day's session *without adjournment*.

F I N I S.

A
L E T T E R

TO THE HONORABLE THE
COURT OF DIRECTORS
OF THE
EAST-INDIA COMPANY,



A

L E T T E R

TO THE HONORABLE THE
COURT OF DIRECTORS

OF THE
EAST-INDIA COMPANY,

F R O M
RICHARD JOSEPH SULIVAN, Esq.

NOVEMBER 15, 1784.

L O N D O N:

PRINTED FOR T. BECKET, PALL-MALL, BOOKSELLER TO
HIS ROYAL HIGHNESS THE PRINCE OF WALES, AND
THEIR ROYAL HIGHNESSES THE PRINCES.
M.DCC.LXXXIV.



TO THE HONORABLE THE
COURT OF DIRECTORS
OF THE
EAST-INDIA COMPANY,

London, Nov. 15, 1784.

GENTLEMEN,

WITH a respect which is due from an individual to so considerable a body as the Court of Directors of the East-India Company, I have for some months forbore to re-solicit you on the subject of my own peculiar and hard situation. The sufferings of my mind have not been less se-

B vere,

2 A LETTER TO THE

vere, from the silence which I have been obliged to hold. But, I was satisfied it was more consistent with propriety, that I should continue to bear a severe weight of grievances, than that the more momentous affairs you have had under deliberation should be obtruded upon.

I now understand the season of weighty business is, for the present, nearly at an end, and that there may be a recess for some weeks to come from essential and important arrangements. In this favorable moment, then, I trust I shall experience your forgiveness, for begging your attention to a candid state of facts. I shall not attempt to impose an unfounded assertion. I aim at no man. My sole object, if in my power, is to establish a conviction in your minds, that the exertion of at least well-meant endeavours merited a less harsh return than a dismission from

your

COURT OF DIRECTORS. 3

your service, which, at a stroke, blasted my fortune, and shook my reputation.

In the course of the last year, while in the prosecution of a long journey in India, on business declared to be of high concern by the Governor General and Council of Bengal, I received a notification from your Presidency of Fort St. George to the following effect :

To Mr. RICHARD JOSEPH SULIVAN.

SIR,

I AM directed by the right honorable the President and Select Committee to acquaint you, that the honorable Court of Directors were much surprised at your appointment to reside with the Nabob as the representative and minister of the Governor General and Council, the natural tendency of such an appointment being to

lesser the respect which ought to be shewn to the authority of a Governor and Council of Fort St. George, not only by the Nabob, but also by the neighbouring princes ; that the residence of the Nabob in the vicinity of Madras clearly pointed out their Governor and Council of Fort St. George as the fittest persons to negotiate any matters with his Highness from the Bengal Government ; and that they therefore revoke your said appointment.

Your conduct in quitting the confidential office which you filled, and going privately into the service of the Nabob, appears also to the Court of Directors of so extraordinary and alarming a nature, and as holding out such an evil example to their servants in general, who ought to be discouraged and deterred by every means in their power from practices of the same kind, that they have thought proper to dismiss

COURT OF DIRECTORS. 5

dismis you from their service, and I am directed to signify to you such dismission accordingly.

I have the honour to be,

SIR,

Your most obedient,

humble servant,

J. HUDESTON, Sec.

Fort St. George,
Feb. 12, 1783.

P. S. If you have any dispatches from the Governor General and Council to the right honorable the President and Select Committee, they request you will be so obliging as to forward them by the tappal * without delay.

The cause of this marked displeasure of so small a majority as *one* of the Court of Directors of July 1782, originated, I will

* Post.

B 3

hope,

A LETTER TO THE

hope, in a hasty opinion, that a servant of the Company had, regardless of his duty, accepted of a commission from a foreign power, and had acted under that commission, adversely to their interests. But, wide, indeed, from the fact was that conclusion, were it as I have assumed. The servant, at whom their indignation was levelled, felt for no foreign power hostile to their welfare. He felt, on the contrary, for their interests; for one and the same are the interests of the Nabob of the Carnatic and the Company: and he wished for no more than to have been the humble means with the superior Government of England in India, of giving stability to those interests, and of drawing into useful and productive being the very few resources which were left to the almost-ruined Carnatic.

But I will not presume on your patience, and recapitulate the dreadful and com-

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complicated series of misfortune which had rushed in on your affairs, and eventually threatened the annihilation of your interests at Madras in 1780. The records of that unfortunate period are before you, and I shall therefore dwell no farther on them than to say, that the gloomy aspect of your political situation then led me, fortified by a conscious rectitude, and regardless of private consideration, to the steps I took: and that those steps were deemed far from reprehensible by the superior powers on the spot, as hath been manifested in the explicit testimony of your Governor General and Council of Bengal.

The papers which I shall now beg leave to appeal to, will, I hope, corroborate this assertion, and prove, in a manner the most unequivocal, that the public good was my sole and only motive in proceeding to Bengal on the affairs of the

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Carnatic ; and that if reprobation was due for having dispensed with, what was in my mind, an unimportant form, when our very existence was at stake, farther rigor was, perhaps, unnecessary, as it could only serve to brand a good intention with suspicion or disgrace.

The Governor General of Bengal did me the honour to receive from me, in July 1783, the following letter ; upon which, though written hastily, and without any view to publication, I shall in great measure rest my defence. It hath already been communicated to the Court of Directors ; yet the praying your attention to it, cannot, I hope, be construed either presuming or disrespectful.

To

*To the Honorable WARREN HASTINGS, Esq.
Governor General of Bengal, &c. &c.*

Calcutta, July 18, 1783.

HONORABLE SIR,

I HAVE had the honor to receive your commands of the 12th instant, directing me "to inform you whether I ever received a letter written to me by Mr. Stephen Sulivan by your direction, which intimated a wish, in any way, to accommodate the appointment which I held from the Governor General and Council of Bengal, of their minister at the Durbar of the Nabob Walla-Jaw, to the wishes of Lord Macartney;" desiring me "to produce a copy of that letter, and of my reply;" and farther calling upon me "to mention what passed upon the subject of it with Lord Macartney."

To

to A LETTER TO THE

To these particular points I shall, in the subsequent part of this address, fully, and, I hope, satisfactorily reply. In the meanwhile, as the present opportunity affords me some little means to explain, if not to vindicate, the conduct I have pursued since my last return to India, and for which I have met with cruel, and, I would fain flatter myself, unmerited punishment, I shall crave the indulgence of your attention for a few moments. The nature, indeed, of what I am to have the honor to lay before you, in answer to the question you have been pleased to put to me, necessarily requires a small degree of retrospection.

It is needless for me, as matters have been relative merely to myself, to go farther back than the month of February, 1781, when I was in possession of the Secretaryship of the military department
of

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of Fort St. George, in consequence of the
express orders of the Court of Directors*.

In that situation, and acting to the best
of my ability, advice came from Europe
of the appointment of Mr. Stephen Sul-
ivan to the Residency of Tanjore; an ap-
pointment of great consequence, but one
which I had reason to suppose Mr. Sullivan
would relinquish for the post which he so
honitably held of your confidential Se-
cretary. Impressed with ideas of this na-
ture, and satisfied of Mr. Sullivan's entire

* "Extract of a Letter to Fort St. George, 3d of
" February, 1780.

" Mr. Richard Sullivan, who has served us several
" years with fidelity and reputation on your civil
" establishment, and who is now returning to his
" rank therein on the ship London, being desirous of
" resuming his former employ of Secretary to the
" military department, with the post of Judge Advo-
" cate General, (always annexed thereto) we there-
" fore direct that Mr. Sullivan be appointed to suc-
" ceed to those employes, whenever they may be
" vacated by Mr. Oakeley."

disposition

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disposition to render me service, if in his power, I wrote to him on the subject. I told him of the intelligence we had received, of the favorable light in which the appointment was generally viewed, of the earnest inclination I had that he should accept of so flattering a testimony of selection by the Company; but, in the event of a disinclination to return from Bengal, of my warm wish to be his substitute in the Residency of Tanjore. Mr. Sulivan will pardon me, I hope, for thus making use of his name. Unhandsome and illiberal insinuations, in those who have found it convenient to be my enemies, have alone compelled me to it. The severest censures have been cast upon me, uncalled upon, and unheard in my defence. Misrepresentation has been received as demonstrative proof. In fact, I have fallen a victim to faction; and all that has been left to me has been after
condem-

condemnation, thus to attempt at the vindication of my character.

Perfect as my reliance was upon Mr. Sulivan, I yet conceived it would not be improper for me to be upon the spot at Bengal, should any new regulations take place with respect to the management of the affairs of the Company in India, and which were then loudly talked of; and especially if those regulations were to have conferred an internal controlling power on the Governor General and Council over the other Presidencies. On this account, I determined on a visit to Bengal; but this was only one reason, and that too entirely personal. I had, however, others, and those more cogent: I shall now explain them with all the brevity in my power.

When Hyder-Ally-Cawn entered the Carnatic in the year 1780, the force of that

that country was so scattered, and the resources of it so reduced, or so diverted from their proper channel, that scarcely any thing short of irreparable ruin promised to be the issue. In a crisis so alarming, you, Sir, with the other members of the then controlling Government, though grievously loaded with the whole burden of the arduous war of the Mahrattahs, and though hourly liable to the calamitous effects of an almost-universal combination of the enemies of the English name, determinately stood forth, and, with inconceivable exertions, amply, and, I may venture to say, providentially recruited the means and spirits of the Carnatic. The arrival of General Coote at Madras gave new life and vigour to the operations of the field, as well as to the deliberations of the Cabinet: but radical errors had crept into the system of Administration at Madras.

It

It is not my business to cast retrospective crimination on the conduct of others, while my object is professedly the vindication of certain parts of my own. An individual presumes too much when he drops a censure that can with propriety only proceed from a competent authority. For me, therefore, to pronounce on the Government of Madras, at the time I am speaking, or at any time antecedent to it, would be inconsistent with that deference and respect which, I hope, I shall always pay to the opinions of my superiors. I shall, therefore, confine myself to the simple remark, that the double Administration of the affairs of the Carnatic was unproductive at the moment, and essentially barren in the prospect. Nor was that all — its evil tendency went farther : it went from the rubs and jarring of divided opinions, to erroneous accounts, and alarming representations. That they were designed

designed to mislead, I will not pretend to say.

In alluding to circumstances of this nature, I wish to carry back your attention, Sir, to those documents, or to those Reports, on which the Governor General and Council conceived it right, as a measure of the last extremity, to cede the Southern Provinces of the Carnatic, amounting to five and twenty lacs of rupees per annum, in perpetuity to the Dutch East-India Company, for the immediate aid of one thousand Europeans: to such a desperate situation was the Carnatic supposed to be reduced. And I do it the more especially, as that apparently-un-avoidable dismemberment of the Carnatic was the first inducement I had publicly to exert myself with the Government General of India, for the benefit of that country and of its unhappy prince.

The

The treaty which was executed by the Governor General and Council of Bengal on the one part, and by the Government of Chinsurah on the other, and which was sent to the Nabob Walla-Jaw, to be by him ultimately executed for the cession of the Southern Provinces of the Carnatic to the Dutch, was by that prince returned to Bengal unexecuted ; and his plea, out of delicacy to those of Madras, who had been the cause of such a measure, was, the intelligence which had just arrived, of “ the King of Great Britain’s declaration “ of April, 1780, whereby all amicable “ treaties were laid aside with the Dutch, “ placing them in no better situation than “ any other neutral power ;” and which consequently shewed “ the propriety of “ withholding from that nation the “ means of acquiring any undue influence “ in the Carnatic.”

The alarm, however, occasioned to the Nabob by this transaction, was great. Long habit had made him tolerably passive under what he termed oppressions, from the Government of Madras; but here he thought he saw an interference ruinous to his affairs: an interference adopted, he was convinced, from the misrepresentations of his enemies, and the inveterate chagrin of disappointed expectants. These were his expressions. To remedy, therefore, the abuses which he thus complained of, and to make a provision for his family, the Nabob conceived it right to send a deputation to Bengal, to lay before the Government General the state of his affairs; to gain the advantage of disinterested advice, and to conclude a treaty with the national representatives of England, which should secure to him his rights, and screen him from distresses, similar to those which he had already grievously sustained. Independent of this,

another

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another consideration urged the Nabob, and it was one, at that moment, of the highest importance ; — I mean the bringing the Mahrattahs into a pacific disposition with your Government.

The Nabob Walla-Jaw had long wished to be employed as the mediator between the English and the Mahrattahs. The temper of the Poonah Durbar he professed himself thoroughly acquainted with. He was told from the Mahrattah capital, that his mediation would probably succeed ; and that it might have done so, is possible, he being, perhaps, the only one of the country powers who could negotiate without being supposed to be personally interested. From Nizam-Ally-Cawn, downwards, each had claims of some sort or other on the possessions of the Mahrattah State.

With objects of this magnitude in contemplation, and from a paragraph in one

of your letters to him, which called upon him to use his influence at the Court of Poonah for the purposes of peace, the Nabob earnestly gave into the idea which presented itself, of deputing an embassy to that quarter, together with the embassy, which I before mentioned, to Bengal. Whom to confer that trust upon, it was not so easy to determine.

Of all the principal Cawns of the Nabob's Durbar, none stood so high in confidence and trust as Siyed-Affam-Cawn. A twenty-years trial in offices of the greatest trust in the Carnatic, had convinced the Nabob of his integrity and abilities. His family and personal character were likewise respected through Hindostan. In short, on every ground of consideration, Siyed-Affam-Cawn struck the Nabob as the properest person to be deputed on both of these embassies; but Siyed-Affam-Cawn was averse to the undertaking, as it related to himself.

In

In this predicament, the Nabob did me the honor to apply to me. A very long acquaintance had impressed the Nabob with the favorable disposition to believe, that I should be happy to exert any little means in my power towards the accomplishing of any matters which could tend either to his, or to the general welfare. He knew he could unbosom himself to me more openly than to most other Europeans; and as the Carnatic was concerned, he was certain, at least, of rectitude on my part in any arrangements which might be negotiated. In this temper of mind, the Nabob desired I would accept of plenipotentiary powers to you, Sir, and to the Pundit-Purdhaun of Poonah. I yielded at once—The distinction was flattering—I felt great satisfaction in being brought forward in a question in which was involved the happiness of millions: I even anticipated credit and reputation; for my intentions were pure, and my views most

be . . . A LETTER TO THE
honestly confined to the public cause.
The issue has shewn me the weakness of
my conclusions. The acceptance of this
important trust, however, and the very
long journey I was to undertake, first to
Bengal, and thence to Poonah, soon point-
ed out the necessity of a colleague. Ill-
ness, or a thousand other accidents, might
befal a single person on the road: it was
but prudent, therefore, to guard against
what might eventually frustrate the object
of the mission. On this account, Siyed-
Assam-Cawn was again applied to, and
with more success than in the first instance.
He agreed to be joined with me in the
commission,

The matter thus brought to a conclu-
sion, it became the subject of deliberation,
whether or not it should be communicated
to the Government of Madras. To me it
was very immaterial. To the Nabob,
however,

however, it was otherwise. He apprehended consequences that, to him, were alarming. His principal reasons were, the jealousy of the Governor and Council of Fort St. George, should they be acquainted with his soliciting the protection of Bengal; their anger at his desire to enter into a treaty with the Supreme Board; and, perhaps, their endeavours to prevent his exoneration from the heavy and undefined load which had long and most grievously oppressed him. These, I say, were some of his reasons:—he had others; but those I shall omit, as they do not immediately apply to the subject in discussion.

The Nabob feeling in the manner I have mentioned, and anxious for our departure, lest accident should discover what was in agitation, we earnestly set to work, and, in a few days, embarked for Bengal,

our first place of destination*. And here it may not be amiss simply to remark the situation of affairs, as it then presented itself, February, 1781. To your indulgence, I am sure, I may safely appeal. A suffering man has nothing to fear, though he should lay before you the opinion (however erroneous) that regulated his conduct. The punishment that has been inflicted on me by the Court of Directors, is declaredly founded on this my embassy to Bengal. Fortune, station, and what is dearer to me than all, my good name, on this basis, has received a wound, which honor and innocence should have sheltered me from.

The beginning of the year 1781 saw the English interests in India in a most awful situation. A confederacy of the

* Leave had been granted me, by the Governor and Select Committee, to proceed to that Presidency on my private concerns.

most

most powerful princes of the Peninsula had taken place against us. The two most considerable members of it, Hyder-Ally-Cawn and the Government of Poonah, were in arms. The one occasioning a scene of warfare, which, from its distance and expence, was overwhelming ; and the other, laying waste and desolating the Carnatic. The Soubahdar of the Deccan, wary, but still inclinable to take part in like offensive operations. Mhadajie-Bhonsalah actually in the field with an army of twenty-five thousand horse, and threatening the southern provinces of Bengal : and, if fame spoke true, even the northern chieftains of Hindostan doubtful, or in the disposition to commence hostilities *.

In

* “ Extract of a Letter from NIZAM-ALLY-CAWN to
“ NUDJIP-CAWN, Minister of the Mogul, and
“ Captain General of his Armies, dated Sept. 25,
“ 1780.

“ The world is now involved in calamities through
“ the turbulence of the English. The deceits of this
“ wicked

In a scene of such imminent difficulty,
when nothing less than annihilation to our
very

" wicked nation are spread over the whole empire.
" Wherever the seed of their malignity has been sown,
" it has shortly grown up into a tree, bearing the
" fruits of their wickedness. These people, with the
" greatest inward deceit and treachery, under the
" cloak of sincerity, and professing a strict adherence
" to their engagements, have stretched forth their
" hands over what they in a most humble manner at
" first affected to borrow; — a people worse than
" women, who by their fraud, and the fire of their
" cannon, which, without distinction, is an enemy to
" all, have trod under, and consumed the honor of the
" most illustrious families in this country; — a hand-
" ful of people, without a head or foundation, have
" possessed themselves of the three richest provinces in
" the empire, every one of which is equal to a king-
" dom; — a set of merchants without a name, and
" scarcely known, have engrossed, and disposed of as
" they pleased, the revenues of the Imperial Crown;
" a handful of tradesmen, who in their nature are
" like foxes, have pretended to put themselves on a
" footing with tygers. — Since the necessity of pu-
" nishing this wicked people is obvious, there is no
" time to be lost in considering of it, for these shame-
" less people are not able to face the heroes of war, or
" bear their deadly blows. They are indebted to for-
" tune alone, which has favored them hitherto, for
" the

very existence in the east was apprehended by numbers, who argued not from timidity,

" the acquisitions they have made. With hostile intentions, which they conceal under appearances of a friendly epistolary correspondence, they are, since the last wars against them, enjoying ease and tranquillity in their corners. We owe this to our misfortunes and sins; (the Almighty changes not the situation of men until they change it by their own actions;) yet the Almighty has been pleased to infuse his divine light into me, and point out by inspiration a way to punish these people, for I was the first, through the favor of His Gracious Majesty, to contrive the means of rooting them out. As these shameless people have established settlements in different parts of the empire, under the pretence of giving assistance to such as are powerful in wealth and territories against their enemies, and raised the flame of war, it will be difficult to root them out entirely, unless a resolution takes place to attack and chastise them at once from all quarters; for if the fire of war is not lighted at the very foundation of this people, wherever they are, their settlements cannot be finally destroyed. It was with this view that I stirred up the Poonah Ministers and Hyder-Ally-Cawn against them. The Poonah army was to attack the troops which, under Colonel Goddard, were raising troubles in Guzarat and at Surat.

" Hyder

A LETTER TO THE
midity, but who grounded their reason-
ings upon what had the appearance of in-
evitable

“ Hyder-Ally-Cawn, agreeably to this plan, is de-
“ stroying the country about Arcot and Madras, and
“ engages their attention on that side. Mhdajie-
“ Bhonsalah will attack the Bengal provinces, which
“ are in the neighbourhood of Berar. I contrived so
“ that these people should be so closely attacked, and
“ invested on all sides, that they should want for all
“ sorts of provisions, so as to be reduced in a short
“ time to the extremity of their former situation.
“ All those whom I engaged in this have performed
“ their parts, and agreed to make war and peace with
“ the concurrence of each other, that neither of the
“ parties should get any advantage, or lose, without
“ the other sharing in it.

“ His Gracious Majesty has, without doubt, been
“ informed of this my plan from the intelligence pa-
“ pers from the Decan. The Crown Mutthasuddees
“ in the different Jaghires, whose constant employ-
“ ment is to write the occurrences of the day, have,
“ no doubt, transmitted accounts of it, as this plan
“ has been shewn to all the Foujdars and Jemetdars
“ of the Decan; they seeing advantages likely to ac-
“ crue from it to themselves, have acquiesced and
“ paid obedience to it. Hyder-Ally-Cawn accord-
“ ingly has marched towards Arcot and Madras, and
“ lighted the flame of war in that country; — Mba-
“ dajie-

evitable consequences ; — in such a scene
your exertions alone were looked to for
general

“ dajie-Bhonsalah had sent his son Chimnajee-Bhonsa-
“ lah with twenty thousand horse towards Bengal ; the
“ fair season being almost over, they remained in the
“ Cuttack country, but, by the blessing of God, they
“ will enter into Bengal at the beginning of next
“ year. The forces of the Pundut-Purdhaun sought
“ opportunities to attack Colonel Goddard to the
“ westward , but the rains setting in, they were
“ obliged to go into quarters, but first destroyed, ac-
“ cording to their custom, all the grain and provi-
“ sions in the country. They will, with the blessing
“ of God, effectually destroy the enemy at the be-
“ ginning of the year.

“ I have thought proper to give information of all
“ this to His Majesty before it happened, lest he might
“ imagine this confederacy was intended for some-
“ thing else. Without a blow is struck at the ene-
“ my they cannot be destroyed effectually. The dis-
“ covery of this plan cannot be any detriment to it
“ now ; and I have therefore given you a particular
“ account of what has been done, and of the advan-
“ tages which will accrue from this great underta-
“ king. Mhadajie-Bhonsalah’s forces are employed
“ to invade Bengal ; but as they are not very confi-
“ derable, it would be proper to send his Majesty’s
“ army to the number of two hundred thousand
“ horse

general and particular salvation. But what was the state in which you were supposed to be? Great and extensive plans against the Mahrattahs, it was conjectured, had already exhausted the immediate resources of your government. Money on loan appeared the only means you had of furnishing the necessary disbursements for the general war. Bombay penniless, and ever a losing colony, though then possessing the Concan and part of the Guzarat provinces, was still so far from being able to give assistance, that she drew upon Bengal for enormous supplies. Madras, plunged into almost irremediable difficul-

“ horse by Lucknow into Bengal, and join with Holkar and Mhadajie-Scindia, the two Mahrattah chiefs, for that purpose. The more quarters in which these Christians are engaged, the more they will be divided, and at a loss to act against such attacks. Keep this in your view, and let no one have the leading of this expedition but yourself, and embrace this opportunity of establishing the imperial authority and power of His Sacred Majesty.”

ties

ties, had neither treasury nor credit. The enemy was at her gates; and her monthly expences were such, as nothing but your saving interposition could have enabled her to have borne. In this situation were affairs supposed to be, when the idea presented itself of an embassy to Poomah, which it was hoped would put an end to the horrors and calamities of war; and on the lesser scale, when an embassy to the Governor General and Council of Bengal, on the part of the Nabob, would, it was supposed, ascertain those essential points which were become absolutely necessary to the defence and safety of the Carnatic.

Thus, Sir, were matters viewed by me, as well as by various others, infinitely more enlightened; and thus viewing them, my coming round to Bengal I thought would have entitled me to commendation. The contrary has fatally happened.

Upon

Upon our arrival in Bengal early in March, 1781, Siyed-Afflam-Cawn and myself had the honor of opening to you the nature of our two-fold embassy, and the instructions we had received from the Nabob, to take such steps only as should meet with your ideas, and with your entire approbation. You were pleased to listen to us with attention. As matters related to the Carnatic, you indeed hesitated a little, not being desirous of giving the smallest degree of offence to the Governor and Council of Madras : but when it was represented to you, that the Nabob applied himself to your Government, as to that of the nation as well as that of the Company, and that to no other Government would he, or could he, entrust the great object of our mission, *the stipulating for the exclusive appropriation of the revenues of the Carnatic for the expences of the war with Hyder-Ally-Cawn,* you then assented to the proposition for a treaty,

treaty, which we made on the part of the Nabob, and shortly after executed a provisional one, in the general style and manner of Eastern instruments of that nature, the Sawâl and Jawâb, or requisition and reply.

To the deputation to the Mahrattahs you had objections. You did us the favor to express to us, in terms the most unequivocal, your anxious inclination for a general and a permanent peace with the powers of India, the Mahrattahs in particular. You told us of the steps you were taking for that desirable purpose. You admitted that the mediation of the Nabob Walla-Jaw would carry with it unquestionable weight: but you at the same time gave us to understand, that as General Goddard, on the Bômbay side, was going on successfully; as Colonel Pearse had passed unmolested through the Cuttack

D country;

country; and as the army oppofed to Mhadajie-Scindia had every prospect of reducing that chief to extremities, you were grounded in the opinion, that fresh overtures to the Poonah Administration would be but increasing the exorbitancy of their demands, and that, therefore, it would be more eligible to give up the idea of the embafly to the Pundit-Purdhaun.

We submitted ourfelves, as we were inſtructed, entirely to your direcſion, and confined ourfelves afterwards to the arangement of the affairs of the Carnatic.

On the 2d of April, 1781, the provifional treaty with the Nabob Walla-Jaw was signed and interchanged; and on the fame day, and at the fame time, one of much greater importance was executed, and that which firſt gave the definitive blow to the combination of our enemies,

the

the treaty of alliance with Mhadajie-Bhon-salah, Rajah of Naugpore. And here let me remark, that this was the first time that the Governor General and Council, at the earnest solicitation of Siyed-Assam-Cawn, on the behalf of his master, came into the resolution of appointing a minister and representative at the Carnatic Durbar, who should have power to see that the stipulations of the treaty were duly and faithfully carried into execution. The appointment, at the formal request of the Nabob, was flatteringly bestowed upon me. It is not for me to dwell upon the particular motives which urged the Nabob to this predilection ; neither would it be becoming in me to hint even at the reasons which urged the Supreme Board to an acquiescence in his desire. It is sufficient for me to say, that however deficient in abilities, I still was conceived not unworthy of confidence and trust. The credentials were accordingly given to me,

and I returned to Madras as the minister
of your Government*.

A very tedious journey, owing to the communication being cut off between Mazzulipatam and Madras, retarded the arrival of the treaty at the latter place until very late in August, 1781, although we had departed from Calcutta the 2d of May. The time which elapsed between these dates,

* Extract of Private Instructions from Mr. HASTINGS
to Mr. R. SULIVAN.

" Fort William, April 6, 1781.

" You quitted Calcutta so much more precipitately than I expected, that I had not my dispatches ready to deliver to you; and I now send you the Nabob's letter at some hazard of the way. To the letter I have added a P. S. dictated, word for word, to my Moonshee for correction, and written in my own hand. It gave me an hour's hard labor. Lest it should not prove legible, I send you a fair copy of it inclosed in this, and desire you to urge the arguments which it contains in the most forcible language that you can convey them in. A respect for the Nabob prevented my saying, that if he does

" his

dates, saw a most unexpected change of men and measures at the Presidency of Fort St. George. Mr. Smith had been removed from the seat of Government, and Lord Macartney placed in it, by an immediate appointment from the Company. On the 22d of August I reached Madras, and that very day presented to Lord Macartney the dispatches of the Governor General and Council. I will confess, I

" his part in the execution of the agreement, I will
 " do mine, and I will be his friend while I live, both
 " in India and England; but, that if he abandons me
 " and himself in this business, I will be his inveterate
 " and irreconcileable enemy; for I will not suffer any
 " man to make me an object of contempt with impu-
 " nity. We have called upon General Coote for his
 " support of the agreement, both as a member of the
 " Government, which is bound to maintain it, and as
 " the ultimate object of it. If the Nabob is resolute,
 " no power whatever can defeat the plan; for I am
 " resolved, for my own part, to defend it with the
 " most desperate personal examples, if nothing else
 " will do; and will proceed yet farther, by forcing
 " a public inquiry upon any opposition that it meets
 " with at home."

felt a good deal at the unpleasant circumstances in which Lord Macartney saw himself involved by my appointment. To him every thing came home, although his nomination to the Government had scarcely taken place in England at the time the treaty was concluded: but what was to be done? The treaty and the appointment were formally notified to the Nabob. The welfare of his country, and the happiness of himself and of his family, he flattered himself, were to spring from the arrangements. In short, he thought he could, in consequence, and for once in his life, say, he was the Nabob of the Carnatic, the unfettered sovereign of his dominions.

But this did not relieve me from embarrassment. I felt, indeed, a great degree of satisfaction in being in any manner instrumental to the repose of the Nabob: but yet my Lord Macartney was a
new

new man ! A fair and unimpeached character had apparently gained him his Government : he stood unaccused of a disposition to those practices which had driven the Nabob to shelter himself under the protection of Bengal. Thus situated, my only resource was in the latitude, which I was well assured, you would pardon me in taking. I had intimately known your delicacy and scruples, even when forming the arrangements, when the name of Lord Macartney, as Governor of Madras, was not so much as thought of. In my first conference with Lord Macartney, I explained to him that delicacy and those scruples : I voluntarily promised him to suspend the executive part of my commission, and to wait the decision of any appeal he might deem it expedient to make to Bengal. In writing to you, Sir, on the subject, the next day, I made use of these words :—“ On delivering my dif-
“ patches to the Nabob, both he and his

“ sons felt the warmest gratitude. They
“ promised to be implicitly guided by
“ your advice, and in all things to do as
“ you would have them. This I firmly
“ believe to be their intention. Their
“ present ease and future prosperity de-
“ pend upon it: neither shall the idea be
“ permitted to die away, while I am ca-
“ pable of reminding them of the whole
“ of what they are indebted to your Go-
“ vernment. Lord Macartney, however,
“ sees matters somewhat differently from
“ the Durbar. On the subject of the
“ treaty and the appointment, he unre-
“ servedly, and with candor, told me,
“ that the novelty of it required consid-
“ eration. That he meant to act with
“ the Governor General in every thing:
“ but that, as some attention was due to
“ his own situation, he could wish me to
“ suspend the execution of my commis-
“ sion until he should have represented
“ some matters to your consideration.

“ That,

" That, in the end, however, should you still keep firm to the propriety of the arrangement, and to the utility of a minister at the Nabob's Durbar, he would, without any farther hesitation, go hand in hand with me in the execution of the treaty." My reason for thus quoting at length is, merely to shew the grounds of my forbearance to act immediately at Madras; and for which, though at the moment I was profusely thanked, I have since been given to understand, I have been treated the very reverse of commendation, by the Governor, Lord Macartney, and his Select Committee, in their public capacities*.

However

* Lord Macartney himself did me the honor of mentioning me about a month afterwards to Mr. Hastings, in the following terms, September 28, 1781:

" You lay little constraint on my inclination, in recommending Mr. Richard Sulivan to my good offices; beside the claim, which — (a short compliment

However open and disinterested my conduct was to the Government of Madras, and however certain I was of your countenance and support, in deviating from the strict letter of my instructions, I yet had many difficulties to encounter on the side of the Nabob. The treaty and my credentials had with every form and ceremony (as was unavoidable) been presented to him. Importunities upon importunities daily, hourly accumulated from that quarter. I was called upon to act;

“ pliment is here paid by his Lordship) — his interest
“ is warmly espoused by his kinsman in London, to
“ whom I feel myself very much obliged. Mr. R.
“ Sulivan is, I believe, convinced, that had he arrived
“ here before my accession to the Government, he
“ would have been suspended from the service.
“ Though, in a public consideration, I cannot ap-
“ prove of the commission which he holds at present,
“ I have not the least private or personal objection to
“ it. If the welfare of the Company’s affairs would
“ admit of a representative from the Court of Direc-
“ tors here, other than the Presidency, I should re-
“ joice at such a witness of good, and such a guard
“ against bad, conduct.”

but

but yet I had adopted the line of forbearance ; and however humiliating some people might have called it, that line I was determined to pursue until your pleasure should be known.

I now come to that period when the letter from your Secretary, Mr. Stephen Sulivan, and alluded to in the first part of this address, first reached me. And here I must take the liberty of requesting your attention to dates. On the 2d of April, 1781, during the administration of Mr. Smith, the treaty with the Nabob, Wa-law-Jaw, was concluded. On the 2d of May I left Calcutta with the treaty, in company with Siyed-Affam-Cawn. On the 22d of June Lord Macartney arrived at Fort St. George, as governor of that Presidency, Mr. Smith being removed ; and on the 21st of August of the same year I got to Madras, with the first public documents, all the copies of the treaty, &c.

meant

meant to have been transmitted by the post, having miscarried. I speak of dates, as they involve thus much, at least, if nothing more, *the ready and earnest disposition of your Government to accommodate matters to the satisfaction of Lord Macartney.* The letter from Mr. Sulivan to me by your order was written on the 1st of August, 1781, when you were on your way to Banaris, and at one of those important moments, when nothing but the strongest inclination to harmony could possibly have drawn forth the attention. You could then have but just heard of my Lord Macartney's arrival. Mr. Sulivan's words were as follow :

“ Soorage Gurra, on the Ganges,
“ Aug. 1, 1781.

“ The arrival of Lord Macartney at
“ Fort St. George, and the change which
“ has thereby been produced in the Go-
“ vernment of Madras, have led Mr.
“ Hastings

“ Hastings to think differently of your
“ appointment, as Resident on the part
“ of the Bengal Government, from what
“ it appeared to him before, when it be-
“ came an act of necessity from the con-
“ duct of the late Administration. In
“ short, he is apprehensive (and I trust
“ you will allow not without reason) that
“ his Lordship may view you with an eye
“ of jealousy, and consider you as fixed
“ there as a spy on his actions. To re-
“ move, therefore, every appearance of
“ this sort, and to secure still better your
“ own ground, Mr. Hastings wishes that
“ you would state to Lord Macartney
“ fairly and candidly the reasons for ac-
“ companying Assam-Cawn to Bengal,
“ and the particular manner in which
“ you had been recommended by the Na-
“ bob for the preservation of his interests
“ in the Carnatic ; that you had, there-
“ fore, accepted it, though you knew the
“ odium that it would bring upon you in
“ con-

“ consequence, which you had prepared
“ yourself to meet and despise : but now,
“ when things were so entirely altered,
“ by the removal of the late Administra-
“ tion, and the pointed censure of their
“ conduct in the general letter from
“ home, you would, if the appointment
“ was in the least degree obnoxious, or
“ disagreeable to his Lordship, request
“ leave to decline it. But if, on the con-
“ trary, he had no objection to your hold-
“ ing it, it was then your wish to remain ;
“ not to be a separate and distinct person
“ for the Nabob, and unconnected with
“ the Government of Madras, but, to
“ have an unreserved and unlimited con-
“ fidence with his Lordship, and to be
“ the instrument, through him, of trans-
“ mitting such particulars to Bengal, as
“ he shall deem necessary to the safety of
“ the Nabob and the wellbeing of the
“ Carnatic. You may add, likewise,
“ that this is the precise footing on which
“ the

“ the Governor General means your appointment should now stand, as it is not the intention of the Supreme Council to dictate to Lord Macartney in matters more immediately within his own province, but to assist and co-operate with him.”

I received the letter containing these sentiments late, I think, in September; in every event, many days subsequent to my professing myself resolved to suspend the execution of the ministerial powers until your ultimate determination should be had on the subject. That, however, every possible assurance might be given to my Lord Macartney, that you meant, in the most unequivocal manner, to consult his satisfaction, I immediately, on the receipt of the letter, sent it to my Lord Macartney by his private secretary, Mr. Boyd, for his perusal. My expressions to that gentleman on delivering the letter were,

were, " That the Governor General had
" directed me to communicate his plea-
" sure to his Lordship, and that I did it
" through him (Mr. Boyd) as the clear-
" est and most unreserved manner that I
" could think of." Mr. Boyd brought
me back this letter a day or two after-
wards, but without making any reply or
acknowledgement on the part of Lord
Macartney, nor any expressions of the
sentiments with which he might have
been impressed by this communication.
This made no alteration in my conduct.
I considered myself, and have invariably
acted accordingly, both as pledged by my
promise to Lord Macartney, and bound
by your injunctions, to withhold myself
from the execution of the powers with
which your Government had invested me,
excepting the single instance of *prevailing*
upon the Nabob to grant the assignment,
as shall hereafter be more particularly de-
tailed.

Very

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Very early, therefore, was the good disposition of your Government to Lord Macartney made known to him. In the first place by your Minister's positive, though unauthorised, suspension of his powers; and in the second, by the foregoing express directions, transmitted to me by your secretary, Mr. Sulivan.

It would be wearisome to you, to carry you through the mazes of the scene which presented itself from August to December, 1781. Suffice it for me to say, that during all that time, with the execution of the powers of the Minister suspended, I continued invariably, though not openly, to assist the measures of my Lord Macartney at the Durbar of the Carnatic. Nay, I went farther, I, unknown to him, encountered and frustrated the consequences which would have resulted from the opinions and the apprehensions of men, whom, I confess, I conceived prejudiced,

E but

but whom I have since found to have been clear and well founded in their judgement. For the explanation of this I reserve myself to a future opportunity. About the beginning of December, or the latter end of November, 1781, the negociation on the part of Lord Macartney began with the Nabob, for that exclusive assignment of the revenues which was afterwards acquired. This negociation began with the most unpromising aspect to his Lordship. It was looked upon as visionary. No man could imagine the Nabob could be brought to yield to so unlimited an interference in the management of his country. Indeed, my Lord Macartney could not have been of that opinion himself. It is needless for me to enter into all the particulars, and to narrate to you the efforts which were made to accomplish this point. You know them full well. You know them from the Nabob himself, as well as, by his express command, from his Minister, Siyed-Affam-

Cawn.

Cawn. No one reason, however, could have had weight with me sufficient to have drawn forth an interference, had it not been one of great, and of public necessity. This was the necessity of the state :—Months had already elapsed since our return from Bengal, and yet nothing productive had grown out of the treaty, a treaty professedly of resource and supply. Neither did the measures that were pursuing promise any thing satisfactory in the end. This ruined the prospect of aid which you had promised yourself from the Carnatic ; an aid becoming, if possible, every day more necessary and important. When I considered matters, therefore, as they appeared to me, as they must, indeed, have appeared to every body else ; and when, in the earnestness of acquiring the assignment, it was clearly and voluntarily declared, that the interference in the revenue was meant to be continued no longer than till the conclusion of the

war with Hyder-Ally-Cawn, agreeably to the article of the treaty of Fort William, I own; I then felt the disposition to urge the matter to a conclusion; and it was happily effected the 2d of Dec. 1781.— An extract of the Nabob Walla-Jaw's letter to you on this subject, five days after it happened, is as follows:

" Lord Macartney sent his Secretary,
" Mr. Staunton, to me, on the 5th of
" November last, with a paper, requiring
" powers to be given to the Tassaldars to
" be appointed on the part of the Com-
" pany: but as the powers required would
" have been prejudicial to our affairs, I
" made out others agreeably to the treaty,
" and sent them to his Lordship. He did
" not approve of them, but recommend-
" ed the appointment of renters, which I
" agreed to. From a sincere and hearty
" desire for the public good, I have thus
" voluntarily adopted a measure for the
sup-

“ support of the present war; and the
“ papers now sent, especially Lord Ma-
“ cartney's letter of thanks to me, will
“ shew to my friend, that I have in the
“ fullest manner, and with the most un-
“ bounded confidence, performed that es-
“ sential part of our treaty, which pro-
“ vides for the appropriation of the re-
“ venues of the Carnatic for the uses of
“ the present war during its continuance,
“ &c. In entrusting Lord Macartney,
“ however, with the authority with
“ which I have now invested him, I have
“ been actuated, as you will learn by
“ your minister at my Durbar, Mr. Su-
“ livan, by the entire reliance which I
“ place in the good faith of my friend's
“ government.” “ You confirmed to
“ me, in a separate article of our treaty,
“ the strongest assurances of the main-
“ tenance of my rights, and the support
“ of my authority over my country and
“ subjects; and your minister, who has

" given the greatest satisfaction to my
" heart, has, in his letters to me, a-new
" pledged the faith of your Government
" for the inviolable preservation of my
" rights, and for the invariable protection
" which it is in your power alone to af-
" ford me. *I could not be brought to sign*
" and seal the agreement until I received
" your minister's letter. The Governor
" gave Mr. Sulivan every satisfaction re-
" specting this business, and pledged his
" honor to him. The Governor told me
" himself, in Mr. Sulivan's presence, that
" he had satisfied him."

I have quoted the above letter, and have dwelt somewhat on the subject, as in the midst of persecution, the little services I have been enabled to render appear designedly to have been forgotten ; and more particularly, as the exclusive merit of this transaction, if any extraordinary or exclusive merit can be claimed from a common

common discharge of duty, seems eagerly to be grasped at by the Presidency of Madras. I will hope, amongst the many reprehensible parts of my character, that vanity is not the principal. In all the letters I have had the honor to address you on the public service, I do not believe one can bear testimony of my wishing to push myself into a very conspicuous point of view. When good fortune has thrown it in my power to what it was, in fact, only incumbent upon me to do, I have always gratified myself with a silent satisfaction; nor do I ever recollect to have taken from the credit of others, or to have desired to have lessened even an opponent's réputation, although it might have added to my own. What I took the liberty of saying to you in an address of the 3d of February, 1782, and which I must solicit your pardon for appealing to, will, I flatter myself, set this in its proper light. " It is said, but I would fain believe there are no

E 4. " grounds

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" grounds for the assertion, that the ma-
" nagement of Lord Macartney will be
" productive of no one good purpose
" whatever. This is bold. I confess,
" though I feel myself very little obliged
" to his Lordship, that I think and am well
" convinced to the contrary. A distract-
" ed country cannot be regulated in a
" moment. Lord Macartney means per-
" fectly well; nor can any inconvenience
" result from his want of experience, as
" he takes pains to acquire information,
" and in an especial manner, with respect
" to the revenues which have been ceded,
" he employs those in the Committee
" who are of approved honor and abi-
" lity."

I now shall endeavor to draw my sub-
ject to a conclusion. In December, 1781,
as I have before mentioned, the sunnu'd
was granted to my Lord Macartney by
the Nabob, which empowered him to ap-
point,

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point, under certain conditions, the respective renters of the Carnatic. In the February following, I had the honor of writing you a letter, of which the above is an extract. March saw the difficulties thicken in the management of the assignment : but, April was the month when terms were no longer to be held, and when the Nabob, reduced to a shadow, was no longer to be of consideration in his own dominions. The particulars of this business have already been laid before you ; and your resolutions in consequence, criminating the conduct of the Governor and Council of Fort St. George, have been so pointedly communicated to that Presidency, that it would be unbecoming in me to touch upon them any farther.

From the foregoing simple narrative of facts, it will appear, I flatter myself, that, contrary to the instructions which I had received as your minister at the Court of the

the Nabob Walla-Jaw — that, contrary to those dispositions which generally make men tenacious of consequence and authority — I, yet knowing the sentiments by which you were actuated, and which indeed were afterwards fully confirmed to me by your Secretary's letter, not only suspended the execution of the powers of my commission, but, though conscious of illiberal attempts to injure me both in Europe and with the Government General of Bengal, I most zealously exerted myself with the Nabob and his Durbar, and had some little share in bringing that negotiation to a conclusion which vested my Lord Macartney with authority over the Carnatic*. It will likewise, I hope, appear, that

* "Extract of a Letter from the Governor General and
" Council of Bengal, to the Honorable the Court of
" Directors of the East-India Company, October 20,
" 1783.

" And here we beg leave to observe, that we have
" undoubted evidence, from the letters of the Nabob
" Walla-

that from the first day of my landing at Madras until the day of my departure from it, I most determinately, and, I think, I venture not too much when I say, most forbearingly, adhered to the suspension of the powers with which I was entrusted. A period, at least, of eight months, and during the greatest part of which an interference, on my side, was called for by the Nabob. But why should I seek commendation from a circumstance of this nature, when the very men, who then, in the loudest manner, praised me for at least moderation and disinterestedness, now most inconsistently, as I am told, accuse me of remissness and inattention to my duty ; nay, who are even rash enough, or I am misinformed, to declare,

“ Walla-Jaw, as well as from the *representations of Lord Macartney to one of our members*, that it was chiefly owing to Mr. Sullivan’s zeal and influence that the Nabob granted to Lord Macartney the sum total of assignment for the revenues of the Carnatic.”

that

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that representations and remonstrances from the minister, at the moment, might have prevented the extremities to which matters were hurried in the end.

I will acknowledge, and it is yielding a good deal, that representations and remonstrances might have had a good effect; but how could it have been reconcileable to consistency for me to have employed them? Self-suspended, if I may use the expression, and strengthened in that line of conduct by your recommendation, with an appeal at the same moment lying before you from the Presidency of Fort St. George, praying to be relieved from the presence of a minister at the Durbar of the Carnatic; these things all operating and tending to the same point, could not allow me to suppose it proper that I should, without fresh instructions, adopt the line of ministerial interference. Moreover, day after day, I expected orders of recal from

from the Governor General and Council, or a communication of their pleasure on the subject of the Carnatic. Unhappily the treachery and rebellion of Cheyt-Sing engrossing all your time, prevented me from acquiring even the most distant idea of what it was most probable was to be my line of conduct. My last letter to you, Sir, on the subject, a few days before I quitted Madras, and an extract of which I must crave your indulgence for inserting here, will draw to your recollection the awkwardness of my situation.

“ The die is thrown between my Lord Macartney and the Nabob. The former has assumed to himself the power of management, independent of the Durbar, and it is said, he has done so in virtue of a discretionary authority, vested in him by your controlling Government. This being the case, the residence of a minister is no longer eli-

“ gible. I shall, therefore, set off for
“ Bengal by the first ship. In the true
“ spirit of diplomatique etiquette, and to
“ be very correct, I should await your
“ leave ; but the fact is, the battle is now
“ so much in earnest, that, with the com-
“ mission I have in my pocket, it would
“ be no longer in my power to refrain
“ from representations and remonstrances.
“ To get handsomely, therefore, out of
“ the scrape, to keep myself from disgrace,
“ and my commission from dishonor, I
“ throw out the idea, that the urgency of
“ affairs requires my immediate presence
“ in Bengal. In the full conviction that
“ I have acted in a difficult situation for
“ the best, I shall appear before you with
“ the confidence, at least, of an honest
“ man.”

Thus, Sir, I have brought matters to
the period when I found it necessary to
leave Madras. If, in the review of them,

it

it shall appear, that no dishonest motive, no selfish view, actuated my conduct; but, on the contrary, that in the midst of difficulty, I, with zeal, though probably not with prudence, attempted to be of some little service to my employers, and to the public in general, I trust that the sufferings with which I have been oppressed will, by you, as by the unprejudiced part of the world, be thought unusually severe, if not unmerited.

On revisal of what I have had the honor to lay before you in the preceding sheets, much matter will appear, I am apprehensive, foreign to the subject in question. But my situation has become so peculiarly hard, and my mind, in consequence, so feelingly impressed with the smart of personal sufferings, that any wanderings from the direct line, which you, in your letter, were pleased to prescribe to me, will, I hope, meet with
your

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your favorable interpretation. I would not willingly have obtruded myself on your patience; but, when I considered that this might be the only opportunity which might present itself for the vindication of that conduct which I have held, and which has been so cruelly marked by my superiors, I could not, without being wanting both to my character and to my future prospects, refrain from the exposition of a few exculpatory facts. In doing this, I have been enabled, I flatter myself, to throw some little light upon those transactions in the Carnatic, which have been, and still must be, objects of serious investigation. Much more indeed could have been said on them; but I reserve myself to a future time and place for the discussion of a subject which involves infinitely more than the concerns of a single individual. In the mean while, I must crave your permission to request, that this letter, as it now stands, may have the honor

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nor of being admitted on your Records,
and that it may be allowed to be transmitted
to the honorable the Court of Directors
by the first conveyance.

I have the honour to be,
With the greatest respect,

HONORABLE SIR,

Your most obedient,
And most humble servant,

(Signed) R. J. SULIVAN.

F

I would

I WOULD here willingly close my defence, and rest myself on the judgment which, from the preceding facts, may be formed of the principles, if not of the ability, of the conduct, I held during my last year's continuance in your service in India : but I have a few other matters which oblige me to trespass on your attention, and those, perhaps, of greater public than of private consideration.

On my first appointment to the Court of the Nabob Walla - Jaw, as minister from the Governor General and Council of Bengal, I had it in secret, though positive charge, from Mr. Hastings, to draw the Nabob's mind from the unfavorable bias

bias it had long taken against the Soubahdar of the Decan ; and, if practicable, to reconcile him to the idea of turning the pernicious antipathy which subsisted between the two Durbars into an amicable and advantageous intercourse of friendship. The task was an arduous one : but still it was of the utmost importance, and therefore was to be labored.

Impowered by the Governor General, in this manner, to use his name, and aided by the very prevailing influence of his advice and recommendation, I had but little difficulty in bringing the Nabob to that favorable disposition, which a life of jealousy and clashing pretensions had made the Eastern world believe impracticable. He not only acquiesced in the political wisdom of substituting friendship, in the place of enmity, between him and the Soubahdar of the Decan, but he even agreed to meet the Soubahdar and Mr.

Hastings, and, in concert with them, to form that strong and indissoluble alliance which alone was wanting in the Carnatic and Decan, to insure the blessings and permanency of peace.

Matters were in this happy and long-wished-for train. The Governor General had been fully apprised by the Nabob himself of his intentions, and even letters had been dispatched from the Carnatic to Hyderabad, when Mr. Hastings learnt that the commission which had been granted by the Supreme Council to a minister at the Nabob's Durbar had been formally revoked by the Court of Directors. This frustrated some part of the plan ; for this minister was to have attended on the Nabob.

But the Governor General was not at first acquainted with the full extent of the Company's displeasure against the person he

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He had so greatly honored as to select for the appointment of minister at the Carnatic Durbar. His words to me in a letter, the 27th of February, 1783, were as follow :

" You are not dismissed. Private letters, and from persons generally well informed, do, indeed, assert it, and date the act of your dismission on the 11th of July; but the Court of Directors, in a letter of the 12th of July, the only one on the subject, only revoke your appointment made by this Government."

In the same letter he says, " Mr. James Grant has declined his appointment to Hyderabad. The design which I had formed, and for my own execution*, I have totally abandoned. I mean to

* That of meeting the Nabob of Arcot and the Soubahdar of the Decan.

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" propose the appointment for you. I
" find the Board disposed to it, and the
" General (Coote) especially, who has
" received it with an eagerness of appro-
" bation."

The Governor General, of whose friend-
ship and regard it is my highest honor to
boast, in consequence moved my appoint-
ment to Hyderabad, as follows :

Extract from Consultation, 15th of March,
1783.

The Governor General.— " I have hi-
" therto forborne to recommend a succe-
" sor to Mr. James Grant, who has re-
" quested the permission of the Board to
" resign his station of Resident at the
" Court of the Nabob Nizam-Ally-Cawn,
" because it was not a point that imme-
" diately pressed; and the troubles in
" which that Prince was engaged appeared
" to

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" to afford a temporary security against
" any designs which he might wish to
" form against any of the Company's
" territories. As it appears from the
" preceding letter that he is entirely freed
" from his late embarrassments, it becomes
" a subject of important consideration
" with the Board to obviate his being
" led into any hostile designs against us;
" and for that purpose I recommend that
" a letter be immediately written to him,
" to inform him of the treaty lately con-
" cluded with the Peshwa, and to refer
" him for the particulars of this negotia-
" tion to the minister whom we propose
" to depute to him in the room of Mr.
" James Grant, whose ill state of health
" has prevented him from proceeding to
" his station, and has therefore requested
" our permission to be relieved from it.

" That as he has already notified his
" assent to receive Mr. James Grant, and

F 4 " invited

“ invited him to his Court, we have,
“ without waiting for his formal acqui-
“ escence, made the appointment of a
“ successor, whom I would propose to
“ name to him, and I beg leave to re-
“ commend that Mr. Richard Joseph Su-
“ livan be appointed to this office. In-
“ dependently of the experience which
“ the Board have received of Mr. Sullivan's
“ abilities, I have an additional induce-
“ ment for recommending him to this
“ particular employment, in the hopes
“ that he may be made an effectual instru-
“ ment of reconciliation between the
“ Nabob Nizam-Ally-Cawn and the Na-
“ bob Walla-Jaw, an object highly me-
“ riting the attention of the Board; and
“ I am convinced that nothing will be
“ more highly gratifying to Nizam-Ally-
“ Cawn than our endeavours to effect so
“ laudable a purpose; and for this reason
“ I would propose to mention this to
“ Nizam-Ally, as one of the motives
“ for

“ for the choice of this gentleman to
“ that appointment.”

And he did me the farther honor of communicating this recommendation of me to the Supreme Council, in, however little deserved, the most flattering terms :

“ Calcutta, March 15, 1783.

“ I have proposed your appointment in
“ Council to succeed Mr. James Grant, and
“ it is passed ; yet there is one considera-
“ tion which I cannot publickly mention,
“ but which induces me to recommend to
“ you some cautions in accepting it. It
“ may not be approved at home, where you
“ may be made to suffer, if it be but for
“ my mortification ; and Lord Macartney
“ and his Council may resent your accep-
“ tance of our service so far, as to suspend
“ you from their's. In either case, I shall
“ be the instrument of mischief done to
“ you, instead of serving you. I can
“ only oppose to this side of the question,

“ my

“ my opinion, that no other person is so
“ qualified for the office assigned you—
“ none to whom, from the circumstances
“ which have preceded your appointment,
“ the Nizam will be so likely to give his
“ ready confidence—and none so likely
“ to exert his abilities with a zeal for the
“ interests and honor of this Government,
“ equal to that which personal attach-
“ ment, added to public virtue, will, I
“ am sure, inspire during the continuance
“ of it. — One objection I have heard
“ suggested, viz. That Nizam-Ally-Cawn
“ will be prejudiced by your connection
“ with the Nabob Walla-Jaw, his enemy.
“ I think otherwise; and I have stated it
“ as one motive for the nomination, that
“ you are better qualified than another to
“ conciliate.”

The objection alluded to here had im-
mediate attention paid to it by the Governor
General, and a letter was, in consequence,
written

written by him to Nizam-Ally-Cawn, from whom an answer was received as expeditiously as it was possible; of both of which, the following are copies :

" To the Nuvaub NIZAM-UL-MOOLK.

" Port William, March 29, 1783.

" Mr. James Grant, whom I formerly
" deputed to your presence in the place of
" Mr. Hollond, has written to me from
" Mazulipatnam, that a state of ill health
" has prevented him from proceeding on
" that commission, although you have
" been pleased to invite him, and has de-
" fired leave to resign it. I consider it of
" great consequence to have a confiden-
" tial person attendant on you, for the
" maintenance of the friendship which
" your Highness is disposed to retain for
" the Company; and at this time espe-
" cially, when many circumstances con-
" cur which the wickedness of incendia-
" ries, who throw false suspicions on acts
" which

“ which are indifferent in themselves,
“ and invent the reports of others which
“ do not exist. For this purpose I have
“ made choice of Mr. Richard Joseph Su-
“ livan to be the minister of this Govern-
“ ment, and my representative, in the
“ place of Mr. James Grant. But it hav-
“ ing been suggested to me, that your
“ Highness may be influenced by the
“ consideration of his having borne the
“ character of an agent of the Nuvaub
“ Walla-Jaw, with whom you have not
“ been for a long time in the habits of
“ friendship, to withhold from him that
“ degree of confidence and favor which
“ you might be disposed to yield to an
“ indifferent person, I have thought it
“ consistent with prudence to wait till I
“ have informed you of my intentions
“ respecting Mr. Sullivan, and to receive
“ your answer before I carry them into
“ execution. The truth is, that I do not
“ know another so well qualified by his
“ manners,

“manners, integrity, and knowledge of
“affairs, for a station of that trust near
“your Highness's person; and I know
“that his attachment to me is such, as
“will ensure that zeal and truth in the
“representation of my sentiments, which
“can most effectually supply the place of
“a personal intercourse, which I have
“long and ardently wished. He is, be-
“sides, intimately acquainted with the
“state of the Nuvaub Walla-Jaw, and
“with the causes of those circumstances
“which have been the occasion of sepa-
“ration between that Nuvaub and your
“Highness. He can inform you, that
“in those instances the blame has been
“unjustly and falsely cast on that Nu-
“vaub for the actions of others, and that
“he merits your commiseration and re-
“spect, but not your displeasure. This,
“too, was one motive for my choice of
“Mr. Sullivan; for it is one of the duties
“of humanity to reconcile divided friends,
“and

" and more especially mine towards your
 " Highness, to whom I have professed a
 " sincere friendship, and have endeavour-
 " ed to give you proofs of it. Yet if you
 " shall not be willing to receive Mr. Sul-
 " van, I will withdraw my intention of
 " appointing him, for my respect for your
 " Highness will not permit me to do any
 " thing which may be displeasing to you :
 " besides, that his appointment, if contra-
 " ry to your inclination, would defeat the
 " purposes of it, and would be opposite to
 " good sense."

*Reply from the Nuvaub NIZAM-UL-
MOOLK.*

Received July 8, 1783.

" Your letter to this purport, that Mr.
 " James Grant, on account of his illness,
 " has not the power and strength to at-
 " tend at my presence, but has on this
 " plea requested permission to retire ; and
 " that

“ that as the residing of a person on your
“ behalf, for supporting the fabric of
“ friendship, especially in this season,
“ when evil-minded persons are saying
“ words very far from truth, which have
“ not the smallest foundation, to raise
“ displeasure in my heart, you consider it
“ most absolutely necessary ; that, there-
“ fore, you have chosen Mr. Richard Jo-
“ seph Sulivan : but that some persons
“ have hinted to you, that as Walla-
“ Jaw-Bahadre has deviated a little from
“ his obedience to the presence, and Mr.
“ Sulivan was appointed by Walla-Jaw
“ his ambassador, I might not consider
“ that gentleman as much your confidant
“ as I should any other person, and might
“ not treat him as favorably as I do any
“ other ; that, however, as you do not
“ know any other person of so great pro-
“ bity, integrity and confidence, or so
“ well informed in all matters, who
“ would be equal to this important duty,
“ the

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" the residence at my presence ; and as
" that gentleman will shew such attach-
" ment and sincerity, that he will give
" me the greatest satisfaction, so that
" from seeing him I might think the
" long-wished-for interview with you ef-
" fected ; and as that gentleman is fully
" acquainted with the secrets of Walla-
" Jaw-Bahadre; he will be able to ex-
" plain to me the particulars of Walla-
" Jaw's innocence ; that if permission for
" this should not be given, it would be
" far from your wisdom : but that you
" wish for nothing but my satisfaction,
" arrived and acquainted me with the
" contents.

" The case is this ; that formerly I
" wrote, that if you were desirous of
" keeping a person here for the purpose
" of negociating, you should send to the
" presence Mr. John Hollond, who is
" fully acquainted with my temper, and
" has

“ has been long the object of my favors.
“ Now that you write the assurances of
“ Mr. Richard Joseph Sulivan's probity,
“ sincerity, &c. in case Mr. John Hol-
“ lond should be departed for England,
“ as you know the first gentleman to be
“ possessed of such qualities, I doubt not
“ but he is a man of worth, and that his
“ attachments and friendships must be
“ strong, when you call him to such a
“ degree a friend. As soon as I know
“ him to be your real friend, how can he
“ not be the object of my favors ? In short,
“ you write, that if permission should
“ not be given that gentleman to come to
“ the Presence, this occurrence would
“ be far from your wisdom : I have,
“ therefore, without delay given my con-
“ sent that he be sent to the Presence.
“ The words of evil-minded persons have
“ no place in my heart ; accordingly the
“ receipt of arzees from Monsieur Buffly,
“ and of letters from the French King,

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“ the alliance of Hyder-Ally-Cawn de-
“ ceased, and the coming of his son's
“ vakeel, though you may not have been
“ thoroughly informed of these circum-
“ stances, you must have heard them
“ from other quarters: but to this time
“ I am stedfast in the support of my
“ friendship; therefore, in case such a
“ person comes to the Presence, send him
“ with complete information of the ideas
“ and thoughts of your mind, and with
“ such powers in all matters, that he
“ may not be obliged to wait your per-
“ mission in every point. What you
“ write respecting Walla - Jaw - Baha-
“ dre, I will answer after the gentleman's
“ arrival, and after learning the full par-
“ ticulars of that business.”

During the time that the answer from Nizam-Ally-Cawn was coming, I had prepared myself completely for a mission to Hydrabad, and had brought the Nabob
of

of Arcot to the positive decision (which, I fear, will not be again easily effected) of sending one of his own sons along with me as his ambassador to the same quarter; an uncommon, and, agreeably to Asiatic customs, a most flattering compliment to the Soubahdar of the Decan. The Nabob's ideas of what it was expedient should be done, were explicit in his letter to Mr. Hastings, 13th of April, 1783.

Extract of a Letter from the Nabob of the Carnatic to Governor-General HASTINGS, dated the 10th Junaudelowell, 1197, or the 13th of April, 1783.

“ I have understood from Mr. Sulivan and Siyed-Assam-Cawn, the full sentiments of my friend's heart relative to Nizam-Ally-Cawn. As in all other matters, so in this, your wisdom manifests itself in the highest degree. The Nabob Nizam-Ally-Cawn and myself,

G 2 “ though

“ though our dominions adjoin to each
“ other, have never been in cordial bonds
“ of amity. Neither have your Govern-
“ ment and that Prince been upon such
“ terms as the English interests have requi-
“ red. The time, however, is now come,
“ when the pre-eminence of the English,
“ arising from your great exertions, have
“ so circumstanced the political affairs of
“ Hindostan and Decan, that the stepping
“ steadfastly forth in the way of friend-
“ ship may be productive of the best of
“ consequences. On this subject I have
“ opened my mind to Mr. Sulivan, and
“ have requested him to be explicit with
“ you on the part which I intend to take.
“ The moment is an important one;
“ great public good may be effected; and
“ how grateful to my friend that that
“ good should result from his extensive
“ knowledge and abilities. God prosper
“ you, and so regulate all such affairs as
“ you are concerned in, that glory and

“ renown

“ renown may be evermore affixed to both
“ your private and public actions.”

But this, like all that had gone before it, was visionary. The following, from the Governor General, will speak for itself:

“ Fort William, April 28, 1783.

“ I have received your's of the 3d and
“ 13th. What shall I say in reply, but
“ that all our views are frustrated by an
“ event which you, no doubt, know by
“ this time. You will read it in the in-
“ closed extract of the general letter to
“ Fort St. George of the 28th of August,
“ 1782, of which we did not receive the
“ copy till yesterday, though our dif-
“ patches of that date came by the Chef-
“ terfield many weeks ago; and it has
“ been the invariable custom for the Court
“ of Directors to send us copies of all
“ their letters to the other Presidencies

“ at the same time with the originals dis-
“ patched to them. I must not conceal
“ from you that objections were made to
“ your appointment, which induced me
“ to waive the right which I had to consi-
“ der it as passed by my own casting
“ voice, until I had frankly communi-
“ cated one of them to Nizam-Ally-Cawn,
“ and asked him whether it was really
“ one; at the same time declaring, that a
“ principal motive for my making choice
“ of you was, your intimate knowledge
“ of the affairs of the Nabob Walla-Jaw,
“ which qualified you more than any
“ other to conciliate the differences be-
“ tween them. The objection is, that
“ the Nizam would not trust a minister
“ known to be attached to the Nabob
“ Walla-Jaw, his mortal enemy. I daily
“ expect his answer; but to what pur-
“ pose? To expose me to the mortifica-
“ tion of avowing, in reply, the impo-
“ tence of my own authority; not but I
“ have

" have a resource, if my colleagues would
" give me their confidence and their sup-
" port. You might receive a special com-
" mission, though not a permanent resi-
" dence. I fear that friends would oppose
" it, and you too might not relish such a
" commission. In a word, I am most
" cruelly fettered; and this is not one of
" the slightest instances of it."

Thus fortune sported with me in every instance. At every step I moved I was sure to be assailed by crosses and vexation. It was a hard and a tiresome game to play: but the unbounded goodness of the Governor General was still desirous of bearing me up against the shocks I had received. He would have preserved me from disgrace, if in his power; but it was impracticable. I was dismissed from the service of the Company; and the only kind effort which was left him to employ was that which follows:

G 4 " Council

“ Council Chamber, July 29, 1783.

“ Governor General.—The Nabob Nizam-ul-Mulck, in his letter now before the Board, has expressed his entire acquiescence in the proposed appointment of Mr. R. J. Sullivan to be the Resident and Minister of this Government at his Court. In the mean time, it appears from the paper of intelligence transmitted from Hydrabad to the Nabob Wallajah by his writer of intelligence, and inclosed in the Nabob’s letter now before the Board, that the Nabob Nizam-ul-Mulck has made overtures to Tippoo-Sahib and Mr. De Buffy for a new plan of alliance with them, grounded on reports, which are certainly false, that Mhadajie-Scindia has obtained from the King sunnuds, conferring on him the Soubahship of Decan. I do not place an implicit reliance upon the authority of a news-writer; and it is scarcely to

“ be conceived that a man, possessing a
“ superior understanding and temperate
“ judgement, should believe it possible for
“ Mhadajie-Scindia, a vassal of the Mah-
“ rattah State, and the possessor of a domi-
“ nion divided by a powerful and indepen-
“ dent State from that of Decan, should
“ aspire to the sovereignty of the latter,
“ which would render him the constitu-
“ tional superior of his own natural sove-
“ reign. Yet even such a report, coming
“ so near to the most important interests
“ of the Nabob Nizam-ul-Mulck, may
“ have alarmed him, at least, with an ap-
“ prehension of something being projected
“ against him ; and his mind has been long
“ fluctuating between the Company and
“ their enemies. It is dangerous in such
“ a crisis of our affairs to leave him ex-
“ posed to the influence of every rumour
“ or suggestion which the emissaries of
“ Tippoo and the French may convey to
“ him ; and the apparent indifference of
“ this

“ this Government, in leaving him thus
“ exposed, is most likely to excite in him
“ a disposition fitted for the reception of
“ every artifice intended to shake his at-
“ tachment to the Company.

“ I know not what to propose. The
“ Court of Directors have dismissed Mr.
“ R. J. Sulivan from the service. If ano-
“ ther minister is appointed, a reason
“ must be assigned for revoking the ap-
“ pointment already granted to Mr. Suli-
“ van; and the true and only reason,
“ which the Nabob will know, though
“ we should suppress it, is, that Mr. Su-
“ livan was punished by the Company
“ with dismission from their service, for
“ the crime of having accepted a political
“ employment with the Governor General
“ and Council, the proclaimed rulers of
“ the Company's political interests. The
“ little discriminations by which this con-
“ struction may be reconciled to propriety
“ by

“ by those who know the constitution of
“ the Company’s Governments, will escape
“ his penetration, and they cannot be for-
“ mally explained to him. From these
“ circumstances, with the choice already
“ made of Mr. Sulivan to be the minister
“ at his Court, and the strong recommen-
“ dation which was given him, the Na-
“ bob cannot fail to receive, with distrust,
“ any man who shall be entrusted with
“ the same commission ; and he may be
“ inclined, from the same causes, to
“ doubt the power of the Government
“ itself.

“ I know but one expedient to extri-
“ cate us from the present embarrassment,
“ which would be to suffer Mr. Sulivan’s
“ original appointment to be carried into
“ execution ; but applied solely to the
“ purpose of delivering to the Nabob Ni-
“ zam-ul-Mulck the sentiments of this
“ Government, and of receiving his an-
“ swer,

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“ fwer, with orders then to return, either
“ delivering over his charge to another,
“ or notifying that another person should
“ be deputed to succeed him. I do not
“ propose it, because I believe that the
“ Board would refuse their assent to it.
“ I must, therefore, leave the subject thus
“ at large for their future consideration.”

The fate of this last effort was such as the Governor General had apprehended. The Council conceived my dismission by the Court of Directors, an insurmountable obstacle to an immediate employment in the service of the Company, and I was, of course, cast upon the world in a situation little less than ruinous, after the laborious service of many years.

I now shall take leave to draw this long, and, to those not concerned, uninteresting subject to a conclusion. Indulgence will, I am sure, be shewn to the exposition of a suf-

suffering man's complaints. To represent grievances in detail, is a privilege never refused to the oppressed.

What I have hitherto had the honor to lay before you, have been intervening occurrences ; I now shall close, with the unsolicited testimony of your Governor General and Council of Bengal, and of your Governor General in his separate and distinct capacity ; only requesting, as it has not been with an affected humility, I have once more ventured to submit my case to your consideration, that you will listen to what has been so flatteringly urged for me by my superiors abroad, and that you will be pleased to restore me to your service and your favor.

I have the honor to be,
with the utmost respect,
GENTLEMEN,
Your most obedient
and most humble servant,
R. J. SULLIVAN.
Extract

Extract of General Letter from the Honorable the Governor General and Council to the Honorable the Court of Directors, dated Oct. 20, 1783.

Par. 25. " IN writing to you with respect to Mr. R. J. Sulivan, we cannot omit drawing the attention of your honourable Court to the very unpleasant situation in which he is placed by your dismission of him from the service of the Company, and the censure which you have passed upon his conduct.

Par. 26. " Blameable as Mr. Sulivan has appeared to you, in accepting a deputation from the Nabob of the Carnatic to this Government, we yet think ourselves obliged, in honor and regard " to

“ to the character and credit of this gentleman, to intercede with you in his behalf; for we cannot but conclude, “ that when his conduct on the occasion alluded to, had received so strong, though tacit, an approval as was bestowed on it in the trust reposed in him by this Government, of Resident with the Nabob, he must have supposed that he was acquitted of all the blame imputed to him by the Presidency of Madras, for having accepted a commission to Bengal.

Par. 27. “ The Governor General and Mr. Wheler formed the Board in April, 1781, when the agreement, which was a consequence of that commission, was made with the Nabob through his minister, Siyed-Affam-Cawn. The Governor General takes to himself, and believes that he can answer for Mr. Wheler's readiness to do so likewise, whatever responsibility may attend this

“ meas-

“ measure, a responsibility in which Mr.
“ Sullivan cannot in any wise participate.
“ The conduct of the Board in adopting
“ the measure has already been defended
“ in the letters which have been addressed
“ to you from hence ; and, in support of
“ Mr. Sullivan’s conduct, we must de-
“clare, that we believe his intentions to
“ have been directed throughout the whole
“ of it to the honor and benefit of the
“ Company, in which the preservation of
“ the Nabob’s dignity and rights were es-
“sentially included. We take leave to
“ refer you to a letter to the Governor
“ General on this subject from Mr. Suli-
“van, which at his request makes a
“ number in the packet.

Par. 28. “ Under this impression, and
“ because we are well satisfied of Mr. Su-
“ livan’s abilities and integrity, as a faith-
“ful servant of the Company, we parti-
“cularly and individually request, that
“ he

“ he may be restored with his rank to
“ your service; and here we beg leave to
“ observe, that we have undoubted evi-
“ dence, from the letters of the Nabob
“ Walla-Jaw, as well as from the repre-
“ sentation of Lord Macartney to one of
“ our members, that it was chiefly owing
“ to Mr. Sulivan’s zeal and influence that
“ the Nabob granted to Lord Macartney
“ the sunnud of assignment for the re-
“ venues of the Carnatic.

Par. 29. “ Our deference to your opi-
“ nion of Mr. Sulivan’s conduct prevented
“ us from deputing him to Hydrabad, al-
“ though the Nazim had approved of our
“ selection of him for that purpose; he
“ has, of course, suffered a severe disap-
“ pointment, and, perhaps, your honor-
“ able Court may deem him entitled to a
“ recompense for it. This we humbly
“ submit to you as a farther argument in

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“ support of our solicitation in his fa-
“ vor.”

A true extract.

(Signed) E. HAY, Sub-Sec.

*From the Governor General of Bengal to the
Honorable the Court of Directors of the
Honorable United East-India Company.*

“ Fort William, Nov. 28, 1783.

“ HONORABLE SIRS,

“ AMONG the mortifications to
“ which I have been continually subject-
“ ed since my entrance on the office which
“ I yet hold by repeated appointments
“ during a period of near twelve years,
“ there is none which I so severely feel as
“ my concern in the sufferings of those,
“ whom my selection of them for the
“ most important trusts in your service
“ has exposed to persecution here, and to
“ cen-

“ censure, fines, deprivation and dismission from home.

“ It is hard to be loaded with a weighty responsibility without power; to be
“ compelled to work with instruments
“ imposed upon me which I cannot trust;
“ and to see the terrors of high authority
“ held over the heads of such as I myself
“ employ in the discharge of my public
“ duties.

“ Yet, in defiance of past experience,
“ I will hope and believe that this unnatural influence will have its termination, and that my present appeal to
“ your justice will produce the first symptom of a return of that benevolence
“ which your honorable Court has shewn
“ to all, even the meanest, of my predecessors, and which has been denied to
“ me alone, and to me invariably.

“ Mr. Richard Joseph Sulivan is the
“ object of this address. He was unhappy
“ pily commissioned by the Nabob Walla-
“ Jaw, your old and faithful friend and
“ ally, to represent to this Government,
“ (which a solemn act of the British Le-
“ gislature had taught him to regard as
“ the first, and only efficient, instrument
“ of your political dominions, and guar-
“ dian of your national faith in India) the
“ grievances which he sustained, and to
“ solicit our acceptance of the wealth and
“ resources of his country, for the prosecu-
“ tion of the war then raging in it to a
“ degree which threatened it with speedy
“ destruction, and that of your interests
“ involved and united with his. A prayer
“ of so extraordinary a nature was ren-
“ dered yet more unaccountable, but by
“ conclusions which we could only sus-
“ pect, but durst not encourage, from
“ the complaints which were made to
“ us at the same time by the Presidency.

“ of

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" of Fort St. George, that they had in
" vain endeavoured to prevail on the Na-
" bob to grant to them what he was
" thus endeavouring to prevail upon us
" to accept. After the great exertions
" which this Government had used to re-
" trieve and aid the Presidency of Fort
" St. George with the military strength,
" and the resources of grain and treasure,
" of these provinces, by which we had
" already drawn great distress on our-
" selves, we should not only have acted
" inconsistently with the zeal which had
" hitherto animated us, but have been
" wanting in the principles of common
" discretion, had we rejected the means
" so tendered of applying what the ra-
" vages of war had spared of the wealth
" of the Carnatic to its natural defence.
" A deference to the feelings or interests
" of individuals, however dignified, would
" on such an occasion have been surely ill
" timed, and even criminal, if we were

“ internally convinced that it would de-
“feat the purpose which it was so necef-
“fary to obtain.

“ In such a case we had but one alter-
“native, which was, either to accept the
“offer or reject it. It would not admit
“of a reference; for I knew not in what
“terms a reference could have been madè.
“ We could not say to the Presidency of
“Fort St. George : Gentlemen, the Na-
“bob Walla-Jaw has arraigned your con-
“duct, and we require you to examine
“the truth of his allegations, and, on con-
“viction, pass judgement on yourselves.
“ Neither could we direct the Nabob to
“make the same tender to the Presidency
“of Fort St. George which he had made
“to us, after both he and they had de-
“clared that he had refused to grant the
“subject of it to them on their reiterated
“and urgent requisition.

“ We

" We acknowledged the Nabob's deposition ; we accepted his proposal ; and at his request we commissioned Mr. Sulivan, in the character of our agent and minister, to reside with him, and to attend to the performance of the conditions with which it was connected.

" Whatever blame may be imputed to Mr. Sulivan for his acceptance of the original commission, it was wholly obliterated in him, and transferred to the Members of this Government who acknowledged it, who had the legal power of sanctifying it, and did sanctify it by making it the instrument of a treaty concluded under it, and united other trusts from themselves in addition to it. And how was he, impressed with a high respect for the superior Government, confident in the rectitude of its acts, and possibly yielding an ha-

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" bitual deference to the personal charac-
" ters of its members, to suspect, that in
" thus submitting his services to their gui-
" dance, he was entailing on himself the
" penalties which had never been before
" annexed but to flagrant and intentional
" guilt ; or that he was departing from
" his fidelity to his immediate superiors,
" by holding communication with their's
" on points of which they had themselves
" a claim on the latter for every informa-
" tion which he could give ?

" Something too may be pleaded for the
" unguarded generosity which is, natural
" to a season of life not yet matured to
" the steady possession of judgement, un-
" biassed by passion, and which might
" have been, almost allowably on such an
" occasion, excited by the belief of severe
" distress existing in an aged Prince, whose
" life, to the last dregs of it, had been
" spent

“ spent in the mutual intercourse of
“ friendship with the Company and the
“ British nation, and in a participation of
“ all the vicissitudes which had attended
“ their fortune, and by the hope of be-
“ coming the instrument of its removal.
“ Your honorable Court may have seen,
“ in the more recent transactions of the
“ Government of Fort St. George, cause
“ to wish both that his agency and the
“ interposition of this Government, how-
“ ever warranted on their original ground,
“ had been rendered more effectual, and
“ to make larger allowances both for him
“ and for us.

“ Let me not, however, draw upon
“ myself that portion of your resentment
“ from which I have endeavoured to exo-
“ nerate him. My conduct still remains
“ to be measured by the same rule, as if
“ he had no concern in it. If I was
“ prompted

“ prompted to uncommon exertions — to
“ relieve the intolerable expences which
“ the calamities of your other Presiden-
“ cies had drawn on this — to repel the
“ ruin which threatened the existence of
“ your interests in the Carnatic — and to
“ preserve the credit of your political
“ faith : — if the means which I used were
“ warranted by the constitutional powers
“ of your superior and controlling Go-
“ vernment, I affirm, with all humility,
“ that I ought to be exempted from all
“ criminal reproach, although I may, in
“ your judgement, have over-rated the
“ occasion which seemed to call for such
“ interposition ; for it is not easy to devise
“ any ground for the construction of an
“ interested, ambitious, or vindictive mo-
“ tive impelling me to act as I did. I am
“ not a private creditor of the Nabob, nor,
“ unhappy man ! has he even the means
“ of subsistence, much less of corruption,

“ left

“ left him ! I hazarded the sacrifice of
“ personal reputation, both in suffering a
“ diminution of the prosperous state of
“ my own Government, and in assuming
“ a participation in the concerns of ano-
“ ther, which was already sunk in dis-
“ grace, and threatened with annihila-
“ tion : and the gentleman who was at
“ the head of that department, and there-
“ fore most affected by my intervention,
“ was personally known to me only by
“ former habits of friendly intercourse :
“ I remembered him with affection ; and
“ shall heartily forgive him, if he feels a
“ sense of injury done him by a measure
“ which originated from a source too pure
“ to admit of the admixture of any pri-
“ vate consideration.

“ The members of this Administra-
“ tion, however varying in other senti-
“ ments, have all concurred in testifying
“ their

“ their opinion of Mr. Sulivan’s worth
“ and abilities, and in entreating you to
“ pardon what you may yet deem culpable
“ in his conduct. I humbly beg leave to
“ make this separate intercession ; for I
“ have been, and am, from public embar-
“ rassments, occasioned, by his dismission,
“ the greatest sufferer by it ; praying that
“ you will be pleased to restore him to the
“ service, and (may I add?) to indemnify
“ myself and my former colleague from
“ the self-reproach of having contributed
“ to the poverty and distress of an unsuf-
“ fering dependent ; to permit him to
“ draw the allowances which were assign-
“ ed him by the last, but ineffectual ap-
“ pointment, which he received from this
“ Government ; to be their agent and re-
“ presentative at the Court of the Nabob
“ Nizam-ul-Moolk — it was vacated only
“ by his dismission from the service, after
“ having been notified in such a mode as
“ has

“ has rendered it difficult to supply it
“ with any other.

“ I entreat your pardon for the length
“ of this address, which I should have
“ deemed it a duty of respect to have
“ comprised in a much narrower compass,
“ had it simply related to an individual;
“ but as its immediate object was connec-
“ ted with a great and important measure
“ of Government, on the rectitude of
“ which the propriety of my addressing you
“ at all, on such an occasion, depended,
“ I have been unavoidably drawn into a
“ discussion of those points in which both
“ subjects were combined. For a fuller
“ elucidation of the general measure, per-
“ mit me to solicit your particular atten-
“ tion to the minutes of the Board, dated
“ the 21st and 30th of July, 11th of
“ August, and 13th of October, which
“ contain a complete detail of it, unem-
“ bar-

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" barrassed with the voluminous and de-
" sultory matter with which it has at va-
" rious times swelled our consultations.

" I have the honor to be,

" HONORABLE SIRS,

" Your most obedient and

" faithful servant,

(Signed) " WARREN HASTINGS."

T H E E N D.

